



OFFICE OF THE DISTRICT ATTORNEY

TWENTIETH JUDICIAL DISTRICT

Stanley L. Garnett, District Attorney

September 1, 2015

Chief Greg Testa
Boulder Police Department
1805 33rd Street
Boulder, CO 80301

Dear Chief Testa,

This office has completed its review of the circumstances surrounding the shooting of Samuel Forgy in Boulder County, Colorado on July 27, 2015. During that incident, Officer Dillon Garretson fired his sidearm, killing Mr. Forgy. The Officer's actions were therefore reviewed with regard to whether his use of deadly force was legally justified.

Prosecutors and investigators from this office participated actively in this investigation since the day of the shooting, and have continued to work closely with the Boulder County Investigation Team (BCIT) since that time. In addition to being present for the on-scene investigation, we have reviewed reports associated with that investigation, transcripts and video recordings of witness interviews, diagrams and photographs of the scene, the Use of Force Policy for the Boulder Police Department, and the Officer's training records. It is our conclusion that the use of force was justified.

To understand this conclusion, as with most such situations, Colorado law requires that one must understand and appreciate the complex and rapidly developing factual scenario prior to the decision to use deadly force from the point of view of the involved police officers. The following is a brief synopsis of the facts as investigated by the BCIT:

This scenario involved several people: Mr. Forgy, one of his roommates, that roommate's acquaintances, and several neighbors in the apartment next door.

On July 27, 2015, Samuel Forgy was subletting a room in an upstairs four bedroom apartment at 1841 19th Street. That evening, one of Mr. Forgy's roommates was in an upstairs bedroom listening to music. Another roommate was in the common area, where he was

entertaining three out of town guests who were visiting from Connecticut. As the evening went on, the group noticed Mr. Forgy acting odd, at times talking about being the messiah or making nonsensical statements. The group believed Mr. Forgy may have ingested LSD or another hallucinogen. Mr. Forgy later began vomiting, and went to his bedroom.

Mr. Forgy later came back into the common area completely nude. The group tried to ignore Mr. Forgy until he picked up a chair and smashed it to pieces, which he then threw at one of the houseguests. When another tried to intervene, Mr. Forgy became increasingly violent, throwing punches, biting, and pulling hair as the group took Mr. Forgy to the ground and tried to get him to calm down. Large chunks of hair were later found by police in the common area, and obvious bite-marks were observed near the armpit of one of the visitors.



Photograph of the most severely injured houseguest, taken by BCIT investigators at Boulder Community Hospital. This wound was approximately 3 inches long, and opened approximately 3/4 of an inch.



Photograph of the most severely injured houseguest, taken by BCIT investigators at Boulder Community Hospital of the superficial cut across the neck, jaw and chin.

When Mr. Forgy appeared to have calmed down, the group allowed him to get up off the floor. Mr. Forgy appeared to remain calm for a short period of time, but then grabbed a knife and attacked the group. One of the visitors sustained a significant cut over his left eye. He also sustained a superficial cut from beneath his ear across his jawline and chin. These injuries were later photographed and documented at the hospital, where the deeper wound was closed with stitches. Minor injuries and ripped clothing were observed on the others.

After struggling with Mr. Forgy around the apartment and onto a balcony, the group fled. Two people ran out the front door and across a landing to the adjacent apartment, where they called 911. Another of the houseguests ran with the most severely injured individual down the exterior stairs, leaving a significant blood trail.

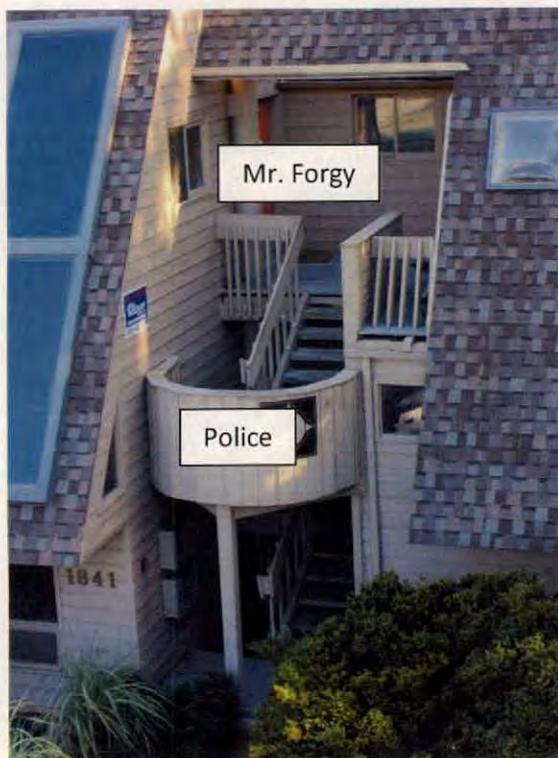
Mr. Forgy ran, still naked, to the adjacent apartment, where he pounded on the door and yelled in a way that did not make sense. Mr. Forgy still had a large knife in his hands and what witnesses described as a crazed look in his eyes. Mr. Forgy then went back to his own apartment.

As officers arrived, they knew from the 911 caller that at least one person had been attacked with a knife and another had been bitten

by a naked person on LSD. They encountered two of the houseguests in the parking lot, spoke with them briefly about what had happened, and immediately radioed for an ambulance.

Additional officers arrived on scene, four of whom proceeded up the outside stairs toward the apartment. The officers announced their presence, and shouted for the person inside to come out with his hands up. The officers had a shield, a tazer, sidearms, and a rifle. As officers reached the landing below Mr. Forgy's apartment, Mr. Forgy came out, now armed with a hammer. Mr. Forgy followed the officers' instructions to put the hammer down, and sat down near the door to the apartment. But after only a few seconds, Mr. Forgy was heard to say either "fuck it" or "fuck you." He then quickly got up, grabbed the hammer, ran past the descending stairs and climbed onto the guardrail closest to the apartment next door.

The officer armed with a tazer fired, but the tazer was ineffective. Later investigation revealed that while one of the probes struck Mr. Forgy in the side, the other missed, striking an exterior wall. Tazers are incapable of delivering an electric charge and incapacitating a person unless both probes make contact, or are within a very close proximity of the target. Mr. Forgy did not respond to the pain of having been hit by a single probe, despite that probe having impacted him and penetrated his skin.



Photograph taken by BCIT investigators of the scene of the shooting. Mr. Forgy was initially in Apartment #8, shown here on the right, then crossed to the left and climbed onto the railing in front of apartment # 7 on the left. Officers were on the landing just below.

Mr. Forgy climbed onto the railing overlooking the landing where officers were positioned, raising the hammer over his head. One of the people who had retreated to the next door apartment heard officers yell "freeze" or "stop." That person also reported that the officers sounded distressed, as if they were in danger.

It was clear to the officers that Mr. Forgy was about to jump down on top of them with the hammer when Officer Garretson fired his sidearm, striking Mr. Forgy four times. Mr. Forgy was killed instantly. His body fell forward and down onto the lower flight of stairs, consistent with officer accounts of Mr. Forgy moving forward at the time the shots were fired.

Analysis of Mr. Forgy's blood at autopsy revealed the presence of LSD, Amphetamines, and THC. It should be noted that while the amphetamines may have been prescription, a typical therapeutic range would be between 10 and 100 nanograms per milliliter of blood. Mr. Forgy had 245 nanograms per milliliter of blood in his

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Boulder Police Department
August 31, 2015
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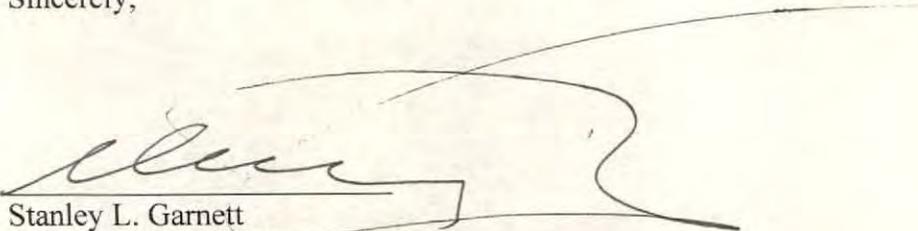
system. While this still might be consistent with a prescription, it is unclear how it might have interacted with LSD and/or THC.

The use of force by Officer Garretson was justified pursuant to §18-1-704, C.R.S. and §18-1-707, C.R.S. Those sections provide that a peace officer is justified in using reasonable and appropriate physical force upon another person when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force. Here, Officer Garretson confronted an individual who had already seriously injured one person with a knife, and was attempting to jump down on him and his fellow officers from a short distance away while wielding a hammer. This was also not a situation in which officers could disengage and hope to simply contain Mr. Forgy. Initially, Mr. Forgy was compliant with officers, but then acted in a way that was sudden and unpredictable, running a short distance to a position from which he presented a an imminent threat. Officers were placed in a situation in which they had to act quickly, and did not have time to retreat to a safe distance. Moreover, given that Mr. Forgy had already seriously injured someone with a knife, it would not have been reasonable for officers to leave him alone in the apartment where another person was still inside and, of course, there were also persons in the adjacent apartments.

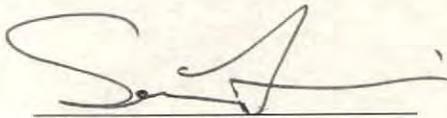
Notably, the most severely injured houseguest wrote a thank you note to the police department stating the following: "Thank you for patching me up, giving me clothes and a safe place to stay. And I hope that the person who shot Sam knows that he saved more peoples' lives in that apartment."

Because the use of force by Officer Garretson was legally justified, no criminal charges will be filed in this matter.

Sincerely,



Stanley L. Garnett
District Attorney
Twentieth Judicial District



Sean P. Finn
Chief Trial Deputy
Twentieth Judicial District



Chron

OFFICE OF THE DISTRICT ATTORNEY

TWENTIETH JUDICIAL DISTRICT

Stanley L. Garnett, District Attorney

December 23, 2013

Chief Mark Beckner
Boulder Police Department
1805 33rd Street
Boulder, CO 80301

Dear Chief Beckner,

This office has completed its review of the circumstances surrounding the shooting of Michael Habay, in Boulder, Colorado on November 24, 2013. Police Officer Vincent Gallerani shot Mr. Habay as Mr. Habay charged at officers with knives in each hand. Mr. Habay did not survive his wounds, therefore the officer's actions were reviewed on the question of whether the use of deadly force was justified.

As part of the analysis, I reviewed the complete file provided by the Boulder County Investigation Team ("BCIT"). Additionally, representatives of my office have worked closely with the BCIT since the day of the shooting, advising investigators, approving warrants, and participating in briefings. The case file made available for review includes reports of the investigators assigned to the investigation, transcripts and video recordings of witness interviews, diagrams and photographs of the scene, the Boulder Police Department's Use of Force Policy, and Officer Gallerani's training records. It is our conclusion that the use of force by Officer Gallerani was justified.

The facts, as determined by the Boulder County Investigation Team are as follows:

In August of 2013, Michael Habay was living with Kristin Stenseng and a roommate at 3009 Madison Ave., #J208, Boulder, Colorado, in an apartment owned by his parents. On August 26, police received a call from Ms. Stenseng's brother requesting that police respond to the apartment. He reported to police that he was on the phone with Ms. Stenseng, and could hear Mr. Habay threaten to slit Ms. Stenseng's throat. He later reported hearing Mr. Habay say that the "cops are here" and "I will kill you."

When Ms. Stenseng was contacted by police, she was upset and crying. She related that Mr. Habay had become verbally abusive when she began packing her things in preparation to

move out of the apartment, calling her names like "nigger" and "whore." Ms. Stenseng reported that at one point during the argument, Mr. Habay had taken out a folding knife and began stabbing a desk. Ms. Stenseng reported being very scared at that time. She told officers that she did not believe Mr. Habay would stab her, but she was fearful for her safety. Officers noticed that Ms. Stenseng was crying and shaking while talking about the knife.

Ms. Stenseng confirmed that Mr. Habay had said something about slitting someone's throat, but did not know whether it had been directed at her or her brother. Officers called Ms. Stenseng's brother to clarify. He said he had heard Mr. Habay threaten him personally as well, but that he did not take those threats seriously. In addition to those threats, he reported that he heard Mr. Habay say "I'm going to slit your throat, bitch" at least a couple of times to Ms. Stenseng. When Mr. Habay was asked if there were any weapons in the apartment, he told officers there were several knives, but no guns. Knives were found in Mr. Habay's bedroom, and stab marks were seen on the desk. He was ultimately arrested and charged with crimes associated with his menacing of Ms. Stenseng. As a result, a protection order was put in place prohibiting Mr. Habay from having any contact with Ms. Stenseng. The case was pending at the time of Mr. Habay's death.

In November, 2013, Ms. Stenseng was again living with Mr. Habay at 3009 Madison Ave., #J208, despite the protection order. On November 24, at 7:19 a.m., officers were dispatched to the apartment based on a call from Ms. Stenseng's mother, who lived out of state, but had just spoken with Ms. Stenseng and was concerned for her safety. She stated that Ms. Stenseng had called her on the telephone "terrified." Police arrived on scene and spoke with Ms. Stenseng, who reported that, while she and Mr. Habay had argued, the situation never became physical.

Police wanted to speak to Mr. Habay. As they approached, they could hear him yelling "fucking nigger, fucking nigger" through an upstairs window. After police knocked on the door, the apartment became quiet. Mr. Habay did not come to the door.

At some point in the investigation, police learned of the prior case and the protection order. Rather than force a confrontation with Mr. Habay, police left the scene and planned to forward the case to detectives or file charges based on Mr. Habay's violation of the protection order. Ms. Stenseng left the area in her car, claiming that she was going to Denver. Officers told Ms. Stenseng not to return to the apartment.

At 12:32 p.m. that same day, police received a call from a concerned neighbor, who indicated that there was a domestic dispute in Mr. Habay's apartment. He reported that he had just seen Mr. Habay on his porch, very agitated, "hitting stuff" with what he described as a large bowie knife or a "shorter machete." According to the caller, Mr. Habay had also thrown his potted plants "all over the place" and was yelling "whore, whore, whore." He described Mr. Habay as "just out of control." He told the dispatcher that he had not seen anyone else, but believed a woman was inside Mr. Habay's apartment. Mr. Habay then went back inside. The caller said that he had heard Mr. Habay yelling in his apartment since seven o'clock that morning, but became very concerned when he saw Mr. Habay on the porch with the knife.

Officers were dispatched to the apartment. When Officer Gallerani arrived, other officers were already on scene assessing the situation. Ms. Stenseng's car was found in the parking lot. Officers saw marks on a post that were consistent with what had been reported by the 911 caller. Plants had been thrown off the porch into the area around the apartment.

Police knocked loudly and announced their presence, but there was no response. The window from which Mr. Habay had earlier been heard yelling, was now closed. At this point, officers had reason to believe that Ms. Stenseng was in the apartment, that Mr. Habay was angry and agitated, that he was armed with a large knife, and that he had previously threatened Ms. Stenseng. When there was no response from inside, police became justifiably concerned that Ms. Stenseng was potentially hurt or in danger inside. After consulting with a Sergeant on scene, the decision was made to enter the apartment to ensure Ms. Stenseng's safety.

Three officers took positions at the door, and others were present in the area. The first officer at the door carried a ram that would be used to force the door open. The second officer carried a ballistic shield and a sidearm. Officer Gallerani was next, armed with a rifle. The door opened after three strikes with the ram. The first officer entered slightly into the apartment with the shield, followed by Officer Gallerani. The officer with the ram intended to be the third to enter, but never got the opportunity because the other two officers never advanced far enough into the apartment.

Both entering officers reported it being dark inside and difficult to see, but saw someone move quickly from left to right across their field of view. Then Mr. Habay ran at the officers. He was armed with a large knife in each hand and was wearing a protective shirt with shoulder pads and plastic armoring. Mr. Habay collided with the shield, swinging the knives at the first officer. Both officers were moving backward out of the apartment as Mr. Habay quickly pushed and maneuvered himself and around the shield and continued to run at Officer Gallerani. Multiple witnesses reported hearing officers yell "Drop the knives" and "back." The officer with the shield intended to fire his sidearm, but due to close quarters around the area of the door frame, he did not have a shot around the shield.

By the time Officer Gallerani fired, he had retreated out of the apartment and quickly retreated across a small patio area where he was standing with his back to a large brick wall. Most of the witnesses in the area reported hearing two to three shots. All witnesses described a single burst of gunfire. Mr. Habay fell to the ground near the brick wall. Officers again told Mr. Habay to drop the knives, which he continued to hold in each hand. They then approached, kicked the knives away, and called for medical assistance.

Police cleared the residence and learned that Ms. Stenseng was not inside. She would later tell officers that she was at a nearby residence with a friend, from where she could hear officers yelling for Mr. Habay to come to the door. She came out only after hearing gunshots.

Two knives were recovered on the porch during a subsequent search of the area. One was 14 inches long, the other was 8 inches long. Three shell casings were also found on the porch. Three corresponding projectiles were also recovered; one was recovered from the back wall of the apartment, which appeared to have struck Mr. Habay in the arm then ricocheted and

fragmented after hitting the door jamb. Two projectiles struck Mr. Habay near the collarbone at a downward angle, causing what initially appeared to be a single entrance wound. The angle of the shots is consistent with witness reports that Mr. Habay was leaning forward as he rushed toward Officer Gallerani, who then fired at a downward angle.

Detectives and investigators associated with the BCIT quickly learned that there were a large number of witnesses who saw or heard relevant events. For example, one family was watching events unfold from a window across the street. Others heard or saw events from within the apartment complex or nearby. These accounts are largely consistent, and confirm officers' accounts.

One account does, however, differ substantially from the others; that is the report of Ms. Stenseng. Ms. Stenseng reported during her second interview with police that she was in a friend's apartment in the same complex, where she was texting with Mr. Habay. She told him not to open the door because the police were there, and that they would "probably just go away." She then got a text from Mr. Habay saying "bye, I love you, or something like that." After hearing two gunshots, she came out of that apartment and saw Mr. Habay on the ground. She reported knowing he was already dead because his skin was grey. She claimed that an officer then shot Mr. Habay in the chest with a shotgun or rifle.

Ms. Stenseng's account of this last shot is contradicted by eyewitnesses at the scene, both police and civilian, as well as physical evidence. As mentioned above, all witnesses reported a single burst of gunfire; none reported a single shot coming later. Eyewitnesses to the event similarly reported nothing like what was described by Ms. Stenseng. Moreover, evidence at autopsy revealed no wounds from a shotgun, the only injury to Mr. Habay's torso being the entry wound near the clavicle, where two projectiles entered. Only three shell casings were found on scene. Analysis from the Colorado Bureau of Investigation shows that each was fired by Officer Gallerani's weapon. Evidence of only three projectiles was found. There was no evidence of less lethal ammunition being used on scene, and all less lethal rounds were accounted for, unfired.

The officers' warrantless entry into the home was justified and appropriate under the circumstances. Police need not obtain a warrant to enter a home where there is an immediate emergency threatening the life or safety of another, and there is a probability that assistance will be helpful. *See People v. Hebert*, 46 P.3d 473 (Colo. 2002). Those circumstances were present here. Police were aware that Mr. Habay was inside. Based on facts available to officers at the time, including the fact that the 911 caller believed a woman to be in the apartment, and the fact that Ms. Stenseng's car was located in the parking lot, they reasonably believed Ms. Stenseng could be in the apartment as well. Based on the prior threat to Ms. Stenseng, Mr. Habay's actions as described by the 911 caller, and the lack of response from within the apartment, police reasonably believed that Ms. Stenseng could be hurt or in danger inside. While police had left the area earlier in the day rather than force a confrontation with Mr. Habay, that would not have been reasonable at this point.

Officer Gallerani's use of deadly force was justified pursuant to C.R.S. §18-1-704, and C.R.S. §18-1-707. A peace officer is justified in using deadly physical force upon another

person when he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force. See §18-7-707(2)(a) C.R.S. Here, the officer was being charged by an individual wielding two knives. Officer Gallerani fired only when Mr. Habay continued to advance on him, and the officer's back was literally against a wall. It is notable that independent eyewitnesses to the event saw Mr. Habay running at the officers, believed Mr. Habay was trying to stab them, and were surprised when no police officers were hurt.

During the course of the investigation, significant information was collected showing that Mr. Habay had a great animosity toward the police. For example, police observed the words "Boulder cops are pussy," and "Boulder are pussy bitches" written in red ink on the front door window frame. On a calendar in the kitchen, the words "To do: kill cops" were written in thick black ink, with an arrow pointing to the date of November 23, 2013. Information was also collected suggesting that he had a serious medical condition and may have been suicidal. At 6:32 a.m. on the day of his death, Mr. Habay wrote on Facebook "I want to died [sic] like in old west." It is therefore unclear whether Mr. Habay's actions were motivated primarily by a desire harm officers, or whether it was his intent to cause them to use deadly force against him.

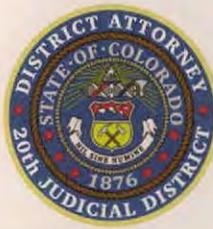
At the time of his death, Mr. Habay had exceptionally high levels of Alprazolam, THC, and Methadone in his blood. It is therefore also unclear to what degree intoxication may have motivated Mr. Habay's actions. It is clear, however, that Mr. Habay's unjustifiably placed Officer Gallerani in a position where he reasonably believed that his life, and the lives of his fellow officers, were in imminent danger.

Because Officer Gallerani's use of force was legally justified, no charges will be filed in this matter.

Sincerely,


Stanley L. Garnett
District Attorney
Twentieth Judicial District


Sean P. Finn
Chief Trial Deputy
Twentieth Judicial District



OFFICE OF THE DISTRICT ATTORNEY

TWENTIETH JUDICIAL DISTRICT

Stanley L. Garnett, District Attorney

September 1, 2015

Chief Greg Testa
Boulder Police Department
1805 33rd Street
Boulder, CO 80301

Dear Chief Testa,

This office has completed its review of the circumstances surrounding the shooting of Samuel Forgy in Boulder County, Colorado on July 27, 2015. During that incident, Officer Dillon Garretson fired his sidearm, killing Mr. Forgy. The Officer's actions were therefore reviewed with regard to whether his use of deadly force was legally justified.

Prosecutors and investigators from this office participated actively in this investigation since the day of the shooting, and have continued to work closely with the Boulder County Investigation Team (BCIT) since that time. In addition to being present for the on-scene investigation, we have reviewed reports associated with that investigation, transcripts and video recordings of witness interviews, diagrams and photographs of the scene, the Use of Force Policy for the Boulder Police Department, and the Officer's training records. It is our conclusion that the use of force was justified.

To understand this conclusion, as with most such situations, Colorado law requires that one must understand and appreciate the complex and rapidly developing factual scenario prior to the decision to use deadly force from the point of view of the involved police officers. The following is a brief synopsis of the facts as investigated by the BCIT:

This scenario involved several people: Mr. Forgy, one of his roommates, that roommate's acquaintances, and several neighbors in the apartment next door..

On July 27, 2015, Samuel Forgy was subletting a room in an upstairs four bedroom apartment at 1841 19th Street. That evening, one of Mr. Forgy's roommates was in an upstairs bedroom listening to music. Another roommate was in the common area, where he was

entertaining three out of town guests who were visiting from Connecticut. As the evening went on, the group noticed Mr. Forgy acting odd, at times talking about being the messiah or making nonsensical statements. The group believed Mr. Forgy may have ingested LSD or another hallucinogen. Mr. Forgy later began vomiting, and went to his bedroom.

Mr. Forgy later came back into the common area completely nude. The group tried to ignore Mr. Forgy until he picked up a chair and smashed it to pieces, which he then threw at one of the houseguests. When another tried to intervene, Mr. Forgy became increasingly violent, throwing punches, biting, and pulling hair as the group took Mr. Forgy to the ground and tried to get him to calm down. Large chunks of hair were later found by police in the common area, and obvious bite-marks were observed near the armpit of one of the visitors.



Photograph of the most severely injured houseguest, taken by BCIT investigators at Boulder Community Hospital. This wound was approximately 3 inches long, and opened approximately 3/4 of an inch.



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When Mr. Forgy appeared to have calmed down, the group allowed him to get up off the floor. Mr. Forgy appeared to remain calm for a short period of time, but then grabbed a knife and attacked the group. One of the visitors sustained a significant cut over his left eye. He also sustained a superficial cut from beneath his ear across his jawline and chin. These injuries were later photographed and documented at the hospital, where the deeper wound was closed with stitches. Minor injuries and ripped clothing were observed on the others.

After struggling with Mr. Forgy around the apartment and onto a balcony, the group fled. Two people ran out the front door and across a landing to the adjacent apartment, where they called 911. Another of the houseguests ran with the most severely injured individual down the exterior stairs, leaving a significant blood trail.

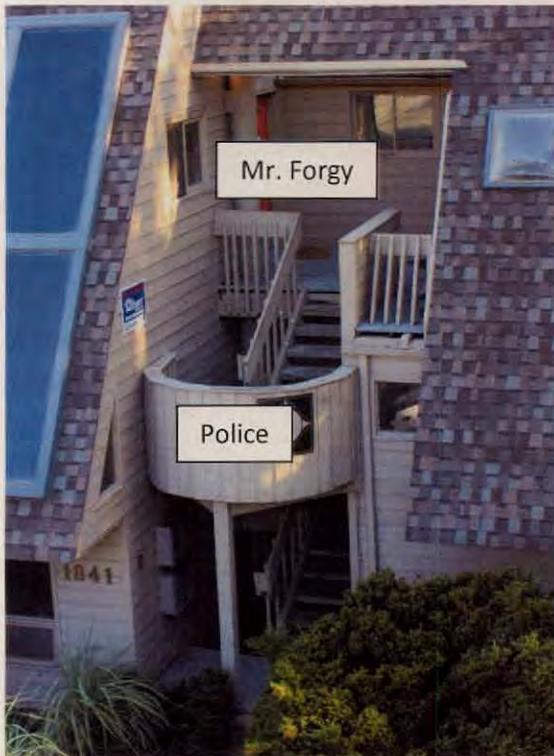
Mr. Forgy ran, still naked, to the adjacent apartment, where he pounded on the door and yelled in a way that did not make sense. Mr. Forgy still had a large knife in his hands and what witnesses described as a crazed look in his eyes. Mr. Forgy then went back to his own apartment.

As officers arrived, they knew from the 911 caller that at least one person had been attacked with a knife and another had been bitten

by a naked person on LSD. They encountered two of the houseguests in the parking lot, spoke with them briefly about what had happened, and immediately radioed for an ambulance.

Additional officers arrived on scene, four of whom proceeded up the outside stairs toward the apartment. The officers announced their presence, and shouted for the person inside to come out with his hands up. The officers had a shield, a tazer, sidearms, and a rifle. As officers reached the landing below Mr. Forgy's apartment, Mr. Forgy came out, now armed with a hammer. Mr. Forgy followed the officers' instructions to put the hammer down, and sat down near the door to the apartment. But after only a few seconds, Mr. Forgy was heard to say either "fuck it" or "fuck you." He then quickly got up, grabbed the hammer, ran past the descending stairs and climbed onto the guardrail closest to the apartment next door.

The officer armed with a tazer fired, but the tazer was ineffective. Later investigation revealed that while one of the probes struck Mr. Forgy in the side, the other missed, striking an exterior wall. Tazers are incapable of delivering an electric charge and incapacitating a person unless both probes make contact, or are within a very close proximity of the target. Mr. Forgy did not respond to the pain of having been hit by a single probe, despite that probe having impacted him and penetrated his skin.



Photograph taken by BCIT investigators of the scene of the shooting. Mr. Forgy was initially in Apartment #8, shown here on the right, then crossed to the left and climbed onto the railing in front of apartment # 7 on the left. Officers were on the landing just below.

Mr. Forgy climbed onto the railing overlooking the landing where officers were positioned, raising the hammer over his head. One of the people who had retreated to the next door apartment heard officers yell "freeze" or "stop." That person also reported that the officers sounded distressed, as if they were in danger.

It was clear to the officers that Mr. Forgy was about to jump down on top of them with the hammer when Officer Garretson fired his sidearm, striking Mr. Forgy four times. Mr. Forgy was killed instantly. His body fell forward and down onto the lower flight of stairs, consistent with officer accounts of Mr. Forgy moving forward at the time the shots were fired.

Analysis of Mr. Forgy's blood at autopsy revealed the presence of LSD, Amphetamines, and THC. It should be noted that while the amphetamines may have been prescription, a typical therapeutic range would be between 10 and 100 nanograms per milliliter of blood. Mr. Forgy had 245 nanograms per milliliter of blood in his

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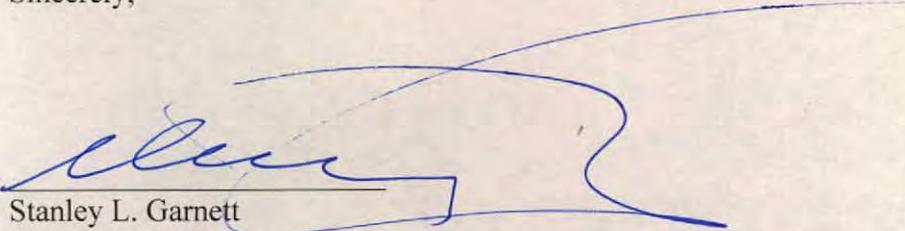
system. While this still might be consistent with a prescription, it is unclear how it might have interacted with LSD and/or THC.

The use of force by Officer Garretson was justified pursuant to §18-1-704, C.R.S. and §18-1-707, C.R.S. Those sections provide that a peace officer is justified in using reasonable and appropriate physical force upon another person when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force. Here, Officer Garretson confronted an individual who had already seriously injured one person with a knife, and was attempting to jump down on him and his fellow officers from a short distance away while wielding a hammer. This was also not a situation in which officers could disengage and hope to simply contain Mr. Forgy. Initially, Mr. Forgy was compliant with officers, but then acted in a way that was sudden and unpredictable, running a short distance to a position from which he presented an imminent threat. Officers were placed in a situation in which they had to act quickly, and did not have time to retreat to a safe distance. Moreover, given that Mr. Forgy had already seriously injured someone with a knife, it would not have been reasonable for officers to leave him alone in the apartment where another person was still inside and, of course, there were also persons in the adjacent apartments.

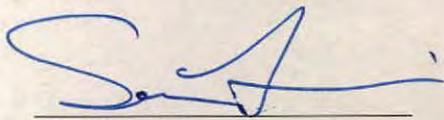
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Because the use of force by Officer Garretson was legally justified, no criminal charges will be filed in this matter.

Sincerely,



Stanley L. Garnett
District Attorney
Twentieth Judicial District



Sean P. Finn
Chief Trial Deputy
Twentieth Judicial District



OFFICE OF THE DISTRICT ATTORNEY

TWENTIETH JUDICIAL DISTRICT

Stanley L. Garnett, District Attorney

June 27, 2016

Chief Greg Testa
Boulder Police Department
1805 33rd Street
Boulder, CO 80301

Dear Chief Testa,

This office has completed its review of the circumstances surrounding the shooting of Bryson Fischer in Boulder County, Colorado on May 22, 2016. During that incident, Officers Ryan Austin and Ross Maynard fired their weapons, striking Mr. Fischer, who died a short time later from his wounds. The Officers' actions were reviewed with regard to whether the use of deadly force was legally justified under the circumstances. Because we have concluded that the use of force was justified, no criminal charges will be filed in this matter.

Prosecutors and investigators from this office have been involved in the investigation since the day of the shooting, as have representatives of several local law enforcement agencies. Consistent with Colorado law, this matter was investigated by the Boulder County Investigation Team (BCIT), which is comprised of members of several independent law enforcement agencies. In addition to being involved in the investigation, members of the District Attorney's office have reviewed reports associated with the investigation as well as transcripts and video recordings of witness interviews, diagrams and photographs of the scene, the Use of Force Policy for the Boulder Police Department, and the Officers' training records. The following is a brief synopsis of the facts as investigated by the BCIT:

On May 22, 2016 around 2:15 in the afternoon, a gunshot was heard by a large number of people in the area of the Broadway Bridge, where Broadway crosses over Boulder Creek. The weather was warm and there were a large number of people in the area. Boulder 911 immediately received several calls. Witnesses reported having seen a white male in a black t-shirt, who was later identified as Bryson Fischer, under the Broadway Bridge with a semi-automatic handgun. It was reported that he had shot one round into the water, that he looked nervous, maybe "not in his right mind," and that he continued to cock and aim the weapon. One of the calls came from the library on Broadway and Arapahoe, where a number of people had come in to seek shelter after hearing the shot.

One witness, who initially believed the shot was a car backfiring, saw Mr. Fischer pacing back and forth with the weapon, and heard clicking sounds as if he were continuing to pull the

trigger. Another witness, who was fishing downstream, heard the shot and looked up. He saw a man with a gun on the opposite side of the creek, standing against the concrete wall under the bridge. The witness watched as the man continued to point his gun at the water, then moved it up and pointed it at the witness. The witness ran from the area and borrowed a cell phone to call 911.

Officers Austin and Maynard were on foot in full police uniform when dispatch aired the call. They immediately ran to the area where the shots had been fired. The officers approached the bridge and went down an incline toward the creek, where they saw a man, later identified as Bryson Fischer, standing in the water. He was on the same side of the creek as the officers, approximately 25 yards from their position, and was holding a handgun. Another unidentified person ran out of the creek and up the opposite embankment. The officers identified themselves as police, and began shouting commands like "drop the gun," which were heard by many nearby witnesses. Mr. Fischer did not drop the gun. Instead, he raised it and pointed it at the officers. One witness recounted, "I know for a fact he pointed that gun at those, he raised that gun toward them police. . . it was like, as soon as he raised they opened fire."

Both officers fired, but shooting conditions were difficult. The officers were standing in the full sun on a bright day, up on the bank of the creek, while Mr. Fischer was lower, partially submerged in the water, and in the shadow of the bridge. Also, Mr. Fischer stood between the reinforcing concrete pillars that protruded from the wall. According to a witness, Mr. Fischer fell to a sitting position at one point, but even then continued to point his gun at the officers. The officers stepped behind a bush to reload. When they stepped back into view, Mr. Fischer was again holding up his pistol as if to fire. The officers continued to shout commands to drop the weapon, which were again ignored. The officers fired until Mr. Fischer finally dropped the weapon and fell down into the water. In total, each officer fired 31 times. While this is a large number of rounds, witness testimony is clear that the officers ceased firing immediately once Mr. Fischer no longer presented a threat.

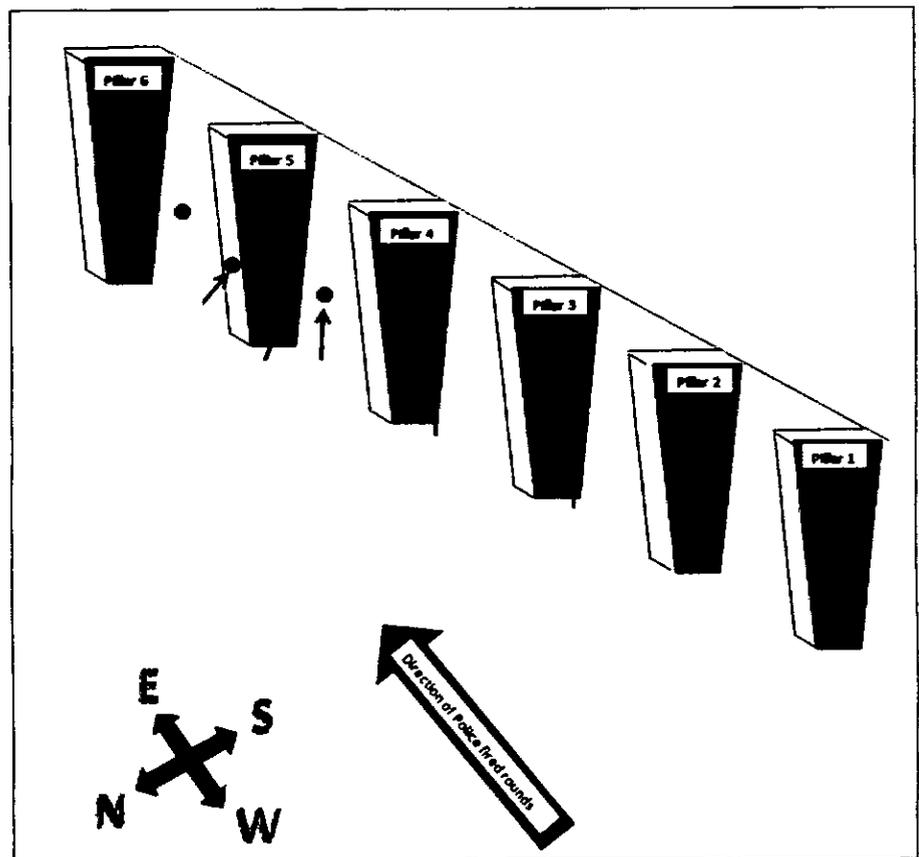


Diagram showing location of bullet impacts from police rounds.

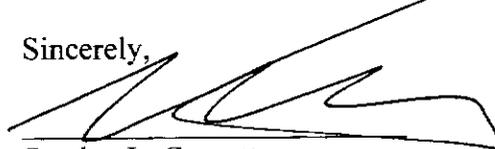
The officers then yelled at Mr. Fischer to keep his hands up, and Mr. Fischer was largely compliant, though his hands would sometimes go below the water level. Both officers approached and Officer Austin applied pressure to a wound in Mr. Fischer's neck, as they brought him up onto a bank where he could begin to receive medical treatment. While some of Mr. Fischer's injuries were obviously very serious and ultimately caused his death, none were immediately incapacitating. As police radioed for help, one of the officers could be heard to say "stay with us buddy, you're going to be ok." At autopsy it was determined that Mr. Fischer had been shot 11 times. Also at autopsy, toxicological tests revealed the presence of methamphetamine, amphetamine, demoxipam, alprazolam, THC, and morphine.

Shortly after Mr. Fischer was transported to the hospital, his weapon, a 9mm Beretta Parabellum, was recovered from the creek. Although it was loaded, the magazine was not properly seated in the frame of the weapon. As a result, it was temporarily incapable of firing. This may explain the "clicking" sound heard by a bystander, as well as the fact that Mr. Fischer, despite aiming his weapon at officers for some period of time, fired no rounds.

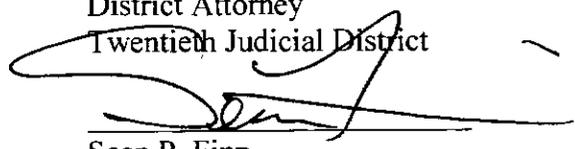
While it is never simple to determine what someone may have been thinking after a situation like this, we find it relevant that Mr. Fischer had a history of suicide attempts. This seems particularly relevant in light of a text conversation he had with a friend on the day before he died. The conversation largely involved Mr. Fischer's escalating drug use. It also involved an exchange in which the friend said "You never answered me. . . why do you have a gun and where did it come from." Fischer replied, "Robbing of course! I'm never going back to jail, so I don't plan on living long!" Another of Mr. Fischer's friends separately reported that, in addition to his battles with drug addiction, a number of things were not going well in Mr. Fischer's personal life; she believed he had committed "suicide by cop."

The use of force by Officers Austin and Maynard was justified pursuant to §18-1-704, C.R.S. and §18-1-707, C.R.S. Those sections provide that a peace officer is justified in using physical force upon another person when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the use, or imminent use, of physical force. Here, the officers' use of force was reasonable. Because the use of force by Officers Austin and Maynard was legally justified, no criminal charges will be filed in this matter.

Sincerely,



Stanley L. Garnett
District Attorney
Twentieth Judicial District



Sean P. Finn
Chief Trial Deputy
Twentieth Judicial District



OFFICE OF THE DISTRICT ATTORNEY

TWENTIETH JUDICIAL DISTRICT

Stanley L. Garnett, District Attorney

September 10, 2015

Mike Butler
Public Safety Chief
Longmont Police Department
225 Kimbark Street
Longmont, CO 80501

Dear Chief Butler,

This office has reviewed the investigation by the Boulder County Investigation Team (BCIT) into the circumstances surrounding the shooting of Levi Rosales in Boulder County, Colorado on August 3, 2015. During that incident, Officer Robert Buswold fired his sidearm grazing Mr. Rosales' hip. It is our conclusion that the use of force was justified, and that the officer should therefore not be charged with any crime resulting from this incident.

It is important to note that although Mr. Rosales has been charged with crimes allegedly arising out of the incidents described here, this review focuses solely on whether the officer's actions conformed with the requirements of Colorado law. The charges against Mr. Rosales are merely accusations; he is presumed innocent beyond a reasonable doubt and is entitled to a fair trial. Mr. Rosales' behavior is discussed here solely as it informs our conclusions with regard to Officer Buswold.

As a part of this review, prosecutors and investigators from this office were on scene on the day of the shooting, and have worked in conjunction with BCIT since that time. We have reviewed the documentation generated by that investigation as well as photographs of the scene, the Use of Force Policy for the Longmont Police Department, and the Officer's training records.

On August 3, at approximately 3:55pm, officers were dispatched to Car Quest, an auto parts store in Longmont. There they learned that a man had stolen a power steering pump and other auto parts, then driven away in a red Cadillac. Witnesses were able to provide police with a physical description of this individual, as well as a partial license plate number.

Shortly thereafter, Officer Buswold was dispatched to a nearby home where the homeowner reported that a person matching the description of the person who was just at Car Quest had pulled into the alley behind his house, come into his back yard, and tried to enter his home through the back door. The homeowner told police that when confronted, the person was angry, and had told him that his car was overheating. The homeowner suggested that he call

Mike Butler
Public Safety Chief
Longmont Police Department
September 10, 2015
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police for assistance. The conversation escalated and the homeowner ultimately told the person that he should leave and that the homeowner was calling the police. In response, the person lifted his shirt displaying a metal object that appeared to the homeowner be a badge or a gun. As the person left, the homeowner was able to use his phone to take a picture of the red Cadillac and its license plate, which was provided to police. He was also able to tell police what the individual was wearing, which included a red button down shirt, black pants, and a fedora.

Officer Buswold spoke with the officers who had been dispatched to Car Quest, and concluded that both incidents likely involved the same individual. Officer Buswold remained in the area looking for the red Cadillac until 4:54pm, when he saw it driving northbound on Lashley Street. Officer Buswold made a U-turn to get behind the Cadillac, and as it turned onto Elk Place, he activated his emergency lights. Shortly beyond the intersection, Elk Place ended in a cul-de-sac, where the Cadillac pulled into the driveway of 120 Elk Place, a private residence.

Officer Buswold pulled up near the driveway, and got out of his patrol car. A male later identified as Levi Rosales exited the Cadillac wearing a red shirt, a tie, and black pants. A brown fedora was later located on the passenger seat. It would later be determined that this was not Mr. Rosales' address, and the occupants did not know him, but the officer did not know that at the time.

Mr. Rosales said to the officer "the guy just ran back that way," and pointed. The officer said "no, I want to speak to you," as he saw Mr. Rosales reaching into the Cadillac. When the officer told Mr. Rosales not to reach into the car, Mr. Rosales closed the driver's door and moved to the passenger side, where he pulled what appeared to be a hunting rifle with a scope through the open passenger side window. Officer Buswold told Mr. Rosales to drop the gun as he drew his own sidearm, but Mr. Rosales did not comply. Instead, Mr. Rosales began manipulating the weapon in a way that made the officer believe he might be manipulating the action of a bolt-action rifle. Mr. Rosales then raised the barrel toward the officer. Officer Buswold fired two shots. One missed Mr. Rosales, and the other grazed Mr. Rosales' hip. Mr. Rosales fell to the ground and yelled "don't shoot." The officer yelled back "don't move."

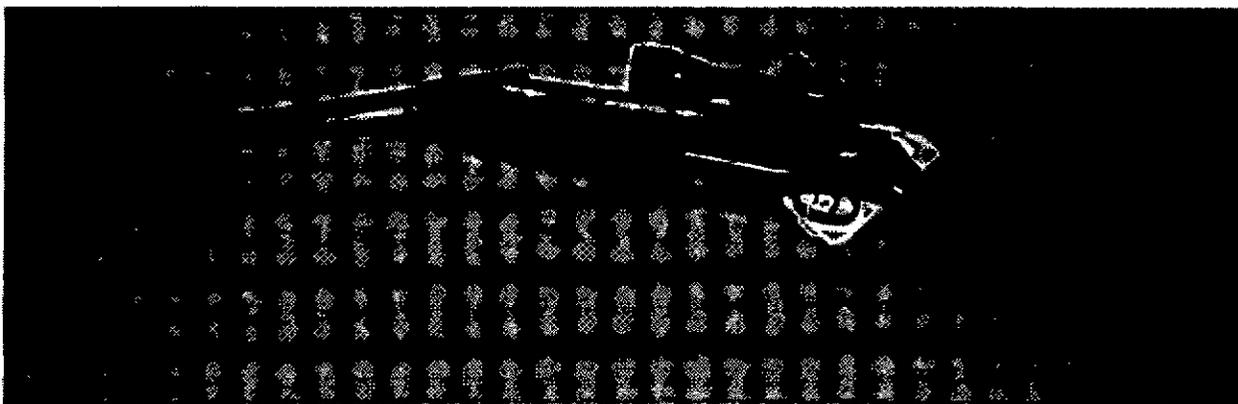


Photo of the rifle Mr. Rosales removed from his vehicle and raised toward Officer Buswold.

Mike Butler
Public Safety Chief
Longmont Police Department
September 10, 2015
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Officer Buswold noticed that his sidearm had jammed, and moved to take cover behind a vehicle while he cleared it. He did not fire his weapon again because after that time he did not feel that he was in immediate danger. The officer saw Mr. Rosales get up and run toward the residence. He radioed for immediate emergency assistance and waited for additional officers.

Mr. Rosales broke in a window-mounted air conditioner unit and entered the home, where no one was present at the time. He ran through the residence leaving behind two glass pipes of a type that are commonly used to smoke methamphetamine. He also left the rifle, which was later discovered to be a pellet gun, near the back door. Mr. Rosales ran out the back, leaving his red shirt and tie in the yard. He then climbed the back fence and entered another yard.

The resident of 139 Placer Street, which backs to 120 Elk Place, was in her back yard when Mr. Rosales came over the fence. She immediately said "please don't hurt me" as Mr. Rosales entered her house. He left again shortly thereafter saying "I'm sorry." A badge was later found by the resident in the bathroom of the home, along with Mr. Rosales' ID and Cadillac title. The resident gave these things to a police officer, who was now tracking Mr. Rosales with the help of a police dog. Notably, the part of the badge that identified it as a badge for someone in "bail enforcement" was covered in black electrical tape.

Mr. Rosales then ran north to 141 Snowmass Place. The resident there heard someone trying to open his sliding back door, and approached just as the door was thrown open. Mr. Rosales tried to enter the house, but was pushed out by the resident, who got no response to his question "what the f___ are you doing?" As Mr. Rosales ran away, the resident called police.

As police were looking for Mr. Rosales in the area of 137 Telluride, they were approached by a woman who had been painting her house. She had left the door to the garage open all day, but the door was now closed, and she had heard noises inside. Officers opened the door and ordered Mr. Rosales to come out. There was no response. There was also no response when a police dog was sent in, or when a "stingball" grenade - a grenade that ejects a large number of rubber balls, was deployed in the garage. A robot was used to clear some items from the garage, and among the items found and removed was a pair of black pants with blood in the hip area.

Finally, when tear gas was deployed into the garage, Mr. Rosales broke out an air vent on the side of the garage near the roof. He then placed one arm and his head out through the opening. He was ordered to come out, but did not comply. Ultimately, officers entered and pulled Mr. Rosales down from where he had climbed into the rafters wearing only his underwear.

Mr. Rosales was immediately taken to Longmont United Hospital where he was treated and released. Mr. Rosales was uncooperative and verbally abusive to both medical professionals and police officers while at the hospital. He did angrily tell police, however, that he believed he had been stopped for no reason, and shot for no reason, and that he "was going to show the

Mike Butler
Public Safety Chief
Longmont Police Department
September 10, 2015
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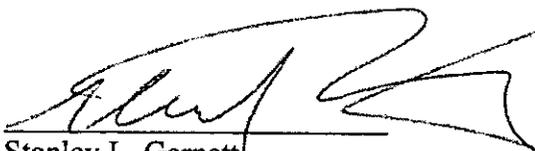
officer he had a bb gun." He was ultimately sedated at the hospital so that he could be medically treated.

Preliminary tests of the blood taken from Mr. Rosales at the hospital show the presence of alcohol, THC, and methamphetamine.

The use of force by Officer Buswold was justified pursuant to §18-1-704, C.R.S. and §18-1-707, C.R.S. Those sections provide that a peace officer is justified in using reasonable and appropriate physical force upon another person when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force. While the weapon Mr. Rosales pointed at Officer Buswold was ultimately revealed to be a pellet gun, the officer had no way to know that he was not in a life or death situation, and was legally entitled to respond as he did.

Because the use of force by Officer Buswold was legally justified, no criminal charges will be filed in this matter.

Sincerely,



Stanley L. Garnett
District Attorney
Twentieth Judicial District



Sean P. Finn
Chief Trial Deputy
Twentieth Judicial District



OFFICE OF THE DISTRICT ATTORNEY

TWENTIETH JUDICIAL DISTRICT

Stanley L. Garnett, District Attorney

October 6, 2016

Sheriff Joe Pelle
Boulder County Sheriff's Office
5600 Flatiron Parkway
Boulder, CO 80301

Dear Sheriff Pelle,

This office has completed its review of the circumstances surrounding the shooting of Adrian Shaffer in Boulder County, Colorado on September 10, 2016. During that incident, Deputy Sheriff Teri Javes fired shots that ultimately killed Mr. Shaffer. The Deputy's actions were therefore reviewed by this office to determine whether her use of force was legally justified.

Representatives from my office participated in this investigation with the Boulder County Investigation Team (BCIT) from its inception. We were present for the on-scene investigation. We have also conducted interviews of witnesses, and have reviewed the associated reports, transcripts, video recordings, diagrams and photographs. We also reviewed the Use of Force Policy for the Boulder County Sheriff's Office and the Deputy's training records. We have concluded that Deputy Javes acted legally in all respects, and that her use of force was justified.

The following is a brief synopsis of the facts as investigated by the BCIT:

On September 9, 2016, Deputy Teri Javes was working her regular daytime shift. Shortly before 5:00 that afternoon, she had been dispatched to an area near Hwy 287 and Oxford Road, where it had been reported that there was debris in the roadway obstructing traffic. Just as Deputy Javes finished clearing that debris, several motorists began calling 911, reporting a shirtless male walking northbound on Hwy 287 with a handgun. The 911 callers described Mr. Shaffer as tense, angry, and walking with a purpose. Some saw the handgun tucked into the waistband of Mr. Shaffer's pants. Others saw him take the weapon out and waive it around while yelling at passing cars. Still others reported Mr. Shaffer to appear "high" or "crazy," and to be yelling at no one in particular. Because she was in the area, Deputy Javes was dispatched to investigate the situation.

Due to the fact that most of the 911 calls came from people driving past on the highway, no single witness saw all of the events that are the subject of this investigation. Rather, a large number of people saw segments of the events described as they drove past. It bears noting that their reports are consistent with each other, and with the statement of Deputy Javes, which she voluntarily provided later that evening.

Before Deputy Javes saw Mr. Shaffer, she was waved down by another motorist who told her about the pedestrian with a gun. That motorist was a former Deputy Sheriff in another jurisdiction who had seen Mr. Shaffer acting strangely as he drove past, then saw him take the pistol from his waistband. Deputy Javes informed him that she was aware of it, and was on her way to investigate. Although the motorist was unarmed, he followed Deputy Javes to Mr. Shaffer's location because he believed the situation to be dangerous, and wanted to help if he could.

At approximately 5:23pm, Deputy Javes saw Mr. Shaffer and pulled over a short distance away. The former Deputy pulled in behind. Deputy Javes saw that Mr. Shaffer had the weapon in his hand, and drew her sidearm. As soon as she opened the door and got out of her vehicle, she saw Mr. Shaffer raise his weapon and fire, blowing out her driver's side window. One of the passing motorists who was interviewed reported "The police didn't provoke him, he just turned around and started firing." Deputy Javes returned fire, and Mr. Shaffer took cover behind a nearby stone pillar that housed the mailbox for a nearby residence.



Driver's side window of Deputy Javes' patrol vehicle as observed on scene.



View from Deputy Javes' vehicle toward the stone pillar, visible here on the right.

Deputy Javes took cover behind her vehicle, temporarily losing sight of Mr. Shaffer. When she peered around the passenger side to see where he went, Mr. Shaffer fired at her again. Deputy Javes carefully went back around the driver's side of her vehicle, retrieved a rifle with a scope out of the passenger compartment, and returned to a position behind her vehicle. She shouted orders at Mr. Shaffer, ordering him to drop his weapon and stand up with his hands up. One

witness believed he heard the Deputy shout "Drop the gun, I don't want to shoot." Mr. Shaffer did not comply. When Deputy Javes saw Mr. Shaffer's heel stick out from behind the pillar, she fired once and missed. Mr. Shaffer still did not comply with her orders. When a part of Mr. Shaffer's side became visible, she fired twice, and saw Mr. Shaffer fall backward to the ground.

As Deputy Javes approached Mr. Shaffer, a Trooper with the Colorado State Patrol pulled up and captured the events that followed on a video camera mounted in his patrol car. The Trooper was also wearing a microphone. Deputy Javes' interactions with Mr. Shaffer were calm and professional as she secured his weapon and waited for medical assistance to arrive.

Mr. Shaffer initially survived his injuries, but passed away on September 18.

Examination of the crime scene revealed three shell casings from Mr. Shaffer's weapon. Two were a short distance from the pillar where he took cover, and another was farther into the street. This is consistent with witness reports of Mr. Shaffer firing at least one shot that hit Deputy Javes' window, then taking cover and continuing to fire from behind the pillar. Further examination also indicated that the patrol vehicle's front grille had been impacted by at least one round from Mr. Shaffer's pistol. That round struck the front of the vehicle and deflected in the engine compartment, ultimately coming to rest on the ground in front of the passenger-side tire.

Behind the pillar where Mr. Shaffer took cover, three unfired bullets were located on the ground. Forensic examination of these bullets revealed the presence of extractor marks, indicating that although they had not been fired, they had been worked through the action of Mr. Shaffer's firearm. This suggests that his pistol may have malfunctioned, causing him to expel live rounds in an attempt to clear a jam. When the weapon was examined however, there was a live round in the chamber, and the weapon was again ready to fire.

In an attempt to explain Mr. Shaffer's behavior, members of the BCIT interviewed numerous people and established a rough timeline of his activities leading up to the time he fired on Deputy Javes. Of note, the weapon he was carrying was taken in a recent burglary. A shotgun taken in that same burglary was located inside a vehicle that was discovered a short distance away. BCIT investigators were also able to contact witnesses who said that Mr. Shaffer had used methamphetamine shortly before this incident. This is consistent with a preliminary toxicological report indicating the presence of methamphetamine in a blood sample obtained when Mr. Shaffer was transported to the hospital. That report also indicated the presence of cocaine metabolite and cannabinoids.

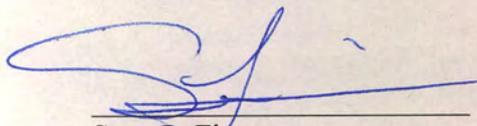
The use of force by Deputy Javes was justified pursuant to §18-1-704, C.R.S. and §18-1-707, C.R.S. Those sections provide that a peace officer is justified in using reasonable and appropriate physical force upon another person when she reasonably believes it necessary to defend herself from what she reasonably believes to be the use or imminent use of physical force. Here, Deputy Javes was fired upon without provocation, and had no reasonable choice but to respond as she did.

Because the use of force by Deputy Javes was legally justified, no criminal charges will be filed in this matter.

Sincerely,



Stanley L. Garnett
District Attorney
Twentieth Judicial District



Sean P. Finn
Chief Trial Deputy
Twentieth Judicial District



OFFICE OF THE DISTRICT ATTORNEY

TWENTIETH JUDICIAL DISTRICT

Stanley L. Garnett, District Attorney

June 7, 2013

Chief Michael Butler
Longmont Police Department

Dear Chief Butler,

My office has completed its review of the circumstances surrounding the officer-involved shooting of Jonathan Shank during a traffic stop at 210 Ken Pratt Boulevard, Longmont, Colorado, on May 22, 2013. Police Officer, Brent Cairns shot and wounded Mr. Shank three times while Mr. Shank was armed with an AR-15 assault rifle. Mr. Shank is recovering from his wounds. Therefore, his actions were reviewed on the question of whether the use of potentially deadly force was justified.

As part of this analysis, I reviewed the complete file provided by the Boulder County Investigation Team. Additionally, representatives of my office have worked closely with the BCIT since the morning of the shooting, advising investigators, approving warrants, and participating in briefings. The case file made available for review includes reports of the investigators assigned to the investigation; transcripts and/or video recordings of interviews with witnesses to the officer-involved shooting and with Officer Cairns, diagrams and photographs of the scene and the involved vehicles, The Longmont Police Department's Use of Force Policy, and Officer Cairns' training records.

The facts, as determined by the Boulder County Investigation Team (shoot team), are as follows:

1. May 22, 2013, at about 2:10 a.m., Officer Cairns was parked in a parking lot on the southwest corner of Ken Pratt Boulevard South Pratt Parkway. He was working traffic enforcement on Ken Pratt Boulevard with a LIDAR unit. Officer Cairns observed a car pull out of the parking lot of a 7-11 store on the southeast corner of the intersection. The car did not have its headlights or taillights illuminated. After waiting briefly to see whether the driver turned the lights on, Officer Cairns pulled out with the intention of making a traffic stop.

2. Officer Cairns saw the vehicle turn east on Ken Pratt Boulevard and began to follow. He lost sight of the vehicle briefly due to other traffic in the area, but sighted it again after crossing Main Street. The vehicle was still travelling without required lights.
3. Officer Cairns saw the vehicle move into the left turn lane to enter the parking lot of the Best Buy store at 210 Ken Pratt Boulevard. This is located on the north side of the street. Officer Cairns is unsure of whether he activated his emergency lights at this point or after entering the parking lot. He had not signaled the motorist to stop previously, but his emergency lights were activated by the time he stopped.
4. The motorist – Jonathan Shank – turned east through the parking lot. In his interview, Officer Cairns described him slowing and then accelerating repeatedly until he climbed a curb and came to a stop on a sidewalk area. Officer Cairns explained that he stopped his patrol car further away from Mr. Shank's car than he would during a normal traffic stop because he suspected Mr. Shank was intoxicated and believed he might back off of the sidewalk. Later measurements showed just over 37 feet between the rear of Mr. Shank's car and the front of the patrol car.
5. According to Longmont Police dispatch records, Officer Cairns radioed that he was making the traffic stop at 2:12:07. At 2:12:22, he radioed the location as between South Emery and South Martin on Ken Pratt Boulevard in front of Best Buy.
6. Officer Cairns reported that he waited in the car for a few seconds to observe Mr. Shank's actions. Although he had trained a spotlight on Mr. Shank's car, Officer Cairns could not see inside the car. At about the time he was opening his car door to exit and approach Mr. Shank's car, Officer Cairns saw the door of Mr. Shank's car open and a leg come out. He stated that he intended to order the driver back into the car.
7. Officer Cairns recalled that before he could say anything, he saw Mr. Shanks standing facing him, holding what Officer Cairns recognized to be an AR-15 assault rifle. Officer Cairns is familiar with the AR-15 from earlier training, and he recently purchased an AR-15. Officer Cairns was armed with a 9mm Glock 17 pistol. He also had a .45 caliber Glock 30 pistol worn in an ankle holster. Officer Cairns said he was "keenly aware" that he was outgunned, and that rounds from an AR-15 would penetrate the body armor he was wearing as well as the body of his patrol car.

8. Officer Cairns described Mr. Shank looking down and manipulating his weapon with one hand. When Mr. Shank looked back up at him, Officer Cairns was acutely aware that he was in danger. He described Mr. Shank being able to "reach out and touch him," a phrase denoting the range and accuracy of the AR-15 rifle. Officer Cairns, who had already removed his sidearm from its holster, fired at Mr. Shank. He believes he fired once or twice.
9. Officer Cairns quickly retreated to the rear of his vehicle, attempting to place the engine block between himself and Mr. Shank. At that point, he aired "Code 10," a signal that an officer needs help. That radio traffic occurred about nine seconds after the traffic stop was aired.
10. As Officer Cairns aired the "Code 10," Mr. Shank was advancing toward him, closing the distance between them by about half. Officer Cairns believes he fired about two shots over the roof of his patrol car at that point. It was while he was in that position that Officer Cairns noticed movement to his side which may be associated with broken glass from his patrol car flying. He also heard about five rapid shots from Mr. Shank and he recalled feeling concussions that were not from his handgun.
11. Officer Cairns ducked down so that Mr. Shank would not be able to target his head and continued to move around the back and up the passenger side of his patrol car. He does not recall firing during that time. Black powder that appears to be gunshot residue on the rear passenger door just below window suggested that he fired from that area. Officer Cairns related a clear memory of fearing that Mr. Shank would come around the back of the car and shoot him from behind.
12. When Officer Cairns reached the windshield area, he rose again and saw Mr. Shanks directly across the hood on the driver's side of the car. He fired two more times and saw Mr. Shank fall to the ground. Afraid that Mr. Shank would fire under the car at his legs, Officer Cairns moved around the front of the patrol car. He saw Mr. Shank laying on the ground.
13. Officer Cairns said he was about to fire again, but stopped when he decided the threat had abated. Mr. Shank's AR-15 rifle was on the ground near him, so Officer Cairns kicked it away. He radioed that shots had been fired and the suspect was down. This was recorded at 2:13:10.

14. Joel Slover, a motorist who was driving east on Ken Pratt Boulevard, saw the exchange of gunfire and called 911 to tell them an officer was involved in a "gunfight." He later described seeing the officer "dodging and weaving" and said he heard at least five shots fired.
15. Longmont Officer Michael Kimbley was the first backup officer to arrive. He found Officer Cairns standing at the back of the patrol car. He made sure Officer Cairns was not hurt and noted Mr. Shank laying on his back next to the patrol car. He placed handcuffs on Mr. Shank. Officer Kimbley noted the AR-15 on the ground north of Mr. Shank. When several other officers arrived, officer Kimbley helped make sure there were no additional occupants in Mr. Shank's car. He then drove officer Cairns to the police station.
16. Based on evidence at the scene, Mr. Shank fired his weapon 23 times and Officer Cairns fired 12 times. Mr. Shank was hit by three rounds. One bullet entered Mr. Shank's the left cheek and lodged near his C1 vertebra. Another passed through his left upper arm and entered his chest cavity. The third passed through his left thigh. Officer Cairns car had extensive damage, including numerous gunshot holes in the windshield, roof, driver's door and rear driver's side door. Both driver's side windows, the rear window and the rear passenger side window were blown out. And numerous defects were found in the driver's seat and throughout the inside of the vehicle.
17. Mr. Shank was taken by ambulance to Longmont United Hospital and he was later airlifted to Denver General Hospital. His blood alcohol level was determined to be .311. As of the writing of this letter, he is still hospitalized but appears to be recovering from his wounds.
18. A search of Mr. Shank's car produced an open 1.75 liter bottle of McCormick's vodka that was nearly empty and a small backpack with a live .223 round that matched the ammunition in the AR-15 resting on top. On the floor officers found a cover that fit the scope on the AR-15.

A peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent he reasonably believes it necessary to effect an arrest or to defend himself or a third person from what he reasonably believes to be the use of imminent use of physical force while effecting or attempting to effect such an arrest. C.R.S. § 18-1-707(1)(a),(b). A peace officer is also justified in using deadly physical force to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force. C.R.S. § 18-1-707(2)(a). "Deadly physical force is defined as "force, the intended, natural, and probable consequence of which is to cause death, and which does in fact cause death." C.R.S. § 18-1-901(d).

Information known to Officer Brent Cairns at the moment he made the decision to fire his weapon the first time included the following:

1. A suspect being contacted for driving without required lights had pulled into a deserted parking lot. He had driven erratically and finally stopped his car on a raised sidewalk area. Officer Cairns suspected that he was intoxicated.
2. The suspect stepped out of his car and faced Officer Cairns holding an AR-15 assault rifle. He looked down at the weapon and seemed to be manipulating it.
3. Officer Cairns was aware of the capabilities of the AR-15, which were far more lethal than those of his sidearm. He knew that the ammunition in an AR-15 would penetrate his protective vest and would pass through the body of his patrol car. He also knew the AR-15 to be more accurate than his Glock pistol.
4. The suspect, after manipulating the AR-15, raised his head and focused his vision on Officer Cairns.

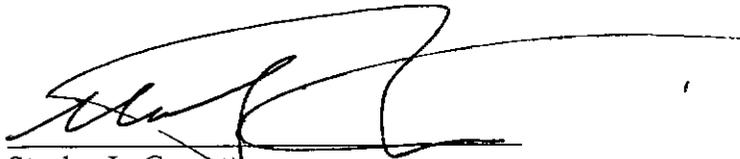
Officer Cairns fired his weapon one or two times and took cover behind his patrol car. It is unclear whether this shot or shots struck Mr. Shank. During the exchange that followed, he observed the suspect advance on him, cutting the distance between them by about half. Movement consistent with flying glass or shrapnel was visible out of the corner of his eye. The sound of rapid-fire gunshots was audible. He felt the concussion of rounds passing through the air. Officer Cairns fired his weapon several times from different locations and continued to move around the car, firing from different locations. He stopped firing when Mr. Shank dropped to the ground and lost control of his weapon. It is likely that the final shots fired by Officer Cairns hit Mr. Shank in the head and chest.

When Mr. Shank looked down at his rifle, manipulated it and focused on Officer Cairns, it was reasonable to conclude that he was about to fire at Officer Cairns. In his interview, Officer Cairns reasonably believed that he was in danger in that moment he had to defend himself against the imminent use of deadly physical force. Later, when he fired additional rounds, including the rounds that struck Mr. Shank, Officer Cairns believed he was defending himself against the actual application of potentially deadly force. When the threat dissipated, Officer Cairns stopped firing.

Chief Michael Butler
Longmont Police Department
June 7, 2013
Page 6

I find that Officer Brent Cairns' use of potentially deadly force was justified pursuant to C.R.S. § 18-1-707(2) because he reasonably believed that it was necessary to defend himself from what was, in fact, both the imminent and actual application of potentially deadly force by Jonathan Shank. Therefore, no criminal charges will be filed in this matter.

Sincerely,



Stanley L. Garnett
District Attorney
Twentieth Judicial District



Bruce Langer
Chief Trial Deputy District Attorney
Twentieth Judicial District



OFFICE OF THE DISTRICT ATTORNEY

TWENTIETH JUDICIAL DISTRICT

Stanley L. Garnett, District Attorney

November 9, 2016

Chief Greg Testa
Boulder Police Department
1805 33rd Street
Boulder, CO 80301

Chief Melissa Zak
CU Police Department
1050 Regent Drive
Boulder, CO 80309

Dear Chief Testa,

This office has completed its review of the circumstances surrounding the shooting of Brandon Simmons on October 5, 2016 in Boulder, Colorado in the Champions Center on the University of Colorado campus. During that incident, two Police Officers, one with the Boulder Police Department (BPD) and another with the University of Colorado Police Department (CUPD) discharged their weapons killing Mr. Simmons. The officers' actions were reviewed with regard to whether their use of force was legally justified.

Representatives from my office have participated in this investigation and worked closely with the Boulder County Investigation Team (BCIT) and were present for the on-scene investigation. Over 80 witnesses were interviewed during the investigation, some by investigators from our office, and some by other agencies. We have reviewed the associated reports, transcripts, video recordings, diagrams and photographs. We also reviewed the Use of Force Policy for BPD and CUPD, and the Officers' training records. We have concluded that the use of force was justified.

Police reports provide a relatively complete picture of Mr. Simmons' actions on the morning of October 5, 2016 from around 7:30am, when Mr. Simmons was in his car on the corner of West 79th Avenue and Meade Street in Westminster, Colorado. At that time, Mr. Simmons summoned a pedestrian to his car and told him to listen to the radio, where a religious program was playing. The witness reported seeing Mr. Simmons writing on his hand in red marker and also seeing a sheathed 12-15 inch knife¹ in the car. Shortly thereafter, a resident of Meade Street reported that the words "Murder, Disrespect, Judgment, Cursing thy father's name #4" had been written in red marker on her garage door. At approximately 8:45am, police received a report of a disabled vehicle on Westbound Highway 36 at Interlocken Loop. When

¹ The sword Mr. Simmons was carrying when he entered the Champions Center in Boulder was 31" in length, and is more accurately described as a sword or machete. It is depicted below.

police responded, the vehicle was gone, but based on the description, including a Texas license plate, it is believed to have been Mr. Simmons' vehicle.



Photo of the patient's car with the words "Murder, Disrespect, Cursing thy father's name, Judgement 4" written on the driver-side window.

The patient rolled his window down and asked if he could help Mr. Simmons, who replied "Roll up your window so I can write a commandment." He reported Mr. Simmons using a "devil voice" like out of a movie. When the patient said "no thanks, man," Mr. Simmons became angry and yelled "roll up your fucking window now." Once the window was back up, Mr. Simmons wrote on it in red marker, much as he had done to the other car.

Once Mr. Simmons was done writing on his window, the patient exited his car and stepped toward the Champions Center. When he looked back, he saw Mr. Simmons removing what appeared to be a machete from his car, unsheathe it, and walk purposefully toward him. The man left his crutches behind and ran for the Champions Center as fast as he could, yelling "no, please don't!" The patient was later emotional as he reported "I thought he was going to hack me to pieces with the machete."

Shortly after 9:00am, Mr. Simmons arrived in Boulder and drove onto the University of Colorado campus. He did not park his vehicle, but stopped behind other cars parked in spaces near the Champions Center. The Champions Center houses various facilities including medical and doctors' offices, CU sports team facilities, and administrative offices for the CU athletics department. Shortly after Mr. Simmons arrived, another car entered the lot driven by a patient who recently had hip surgery. Once the patient was parked, he noticed Mr. Simmons writing in red Sharpie marker on the window of another car in the lot. He then briefly looked down to use his phone, and heard someone tapping on his window.



Photo of the other car in the lot with the same words written on the passenger-side window.

The patient entered the Champions Center and made his way to the second floor, which houses the CU Sports Medicine Center. The patient yelled that there was someone after him with a machete as he made his way to the northwest stairwell. When he looked back, he saw Mr. Simmons following. Mr. Simmons appeared focused on the patient as he walked past other people, telling one witness “back away, you don’t want any of this.” The patient and others entered the stairwell, walked quickly down the stairs, and exited the building.



Still photos from a surveillance camera that recorded Mr. Simmons, dressed in all black and wearing a red scarf, entering the Champions Center and proceeding to the stairway.

Shortly thereafter, another employee encountered Mr. Simmons in the stairwell, which although commonly used by employees and others, allowed access to the upper floors only with an access card. Mr. Simmons had apparently proceeded up the stairs when the others went down, and was trying to exit the stairwell through a locked door onto the fourth floor, which houses administrative offices where numerous staff members were present. The employee asked if she could help Mr. Simmons before noticing the machete in his hand. Mr. Simmons responded that he was “looking for sinners.” The employee reported that she was “scared as hell” and ran up to the fifth floor, where she exited the stairwell and began screaming for help.

Police from BPD and CUPD were dispatched emergent to the Champions Center after receiving numerous 911 calls, and began looking for Mr. Simmons as employees, students, and patients were evacuated. Officer Austin arrived and spoke briefly with witnesses who were visibly shaken, and who described a man carrying a machete. He assisted in getting employees to a safe location and ultimately proceeded to the fourth floor. Officer Connor had previously been dispatched to the scene of a hit-and-run accident near the University, and also responded. Both officers entered the stairwell together from the fourth floor and began ascending.

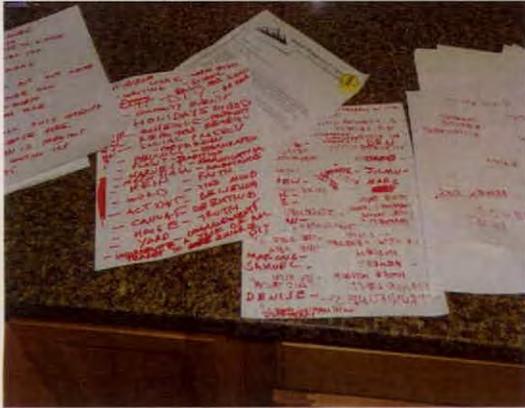


The sword, or machete, held by Mr. Simmons measured 31 inches in length. It is seen here as it was found on scene along with a knife and a pipe taken from Mr. Simmons’ pockets.

As the officers approached the fifth-floor landing, they saw Mr. Simmons descending from the sixth floor with the machete. Because the stairwell cuts back and forth with intermediate landings between floors and only ten steps between landings, Mr. Simmons was already very close to the officers when they saw him. Witnesses heard the officers yell "drop it, drop it!" and "put it down, put it down!" Mr. Simmons, who until then seemed to be walking directly to the stairwell exit, dropped the weapon's sheath on the sixth stair above the landing and began moving directly toward the officers with the machete raised. He yelled something at the officers in the nature of "fuck off" or "fuck you." Both officers fired their weapons as Mr. Simmons continued to advance. Officer Austin fired eight rounds, Officer Connor fired nine rounds. The shots were fired very quickly, and witnesses reported hearing only 4-5 shots in total. Mr. Simmons fell on the fifth-floor landing. Other officers who were searching nearby areas arrived almost immediately and medical attention was provided, but Mr. Simmons did not survive.

The use of force by Officers Austin and Connor was justified pursuant to §18-1-704, C.R.S. and §18-1-707, C.R.S. Those sections provide that a peace officer is justified in using reasonable and appropriate physical force upon another person when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force. Here, it was clear that Mr. Simmons intended to harm officers with a sword, and continued to advance toward them in an aggressive manner. Moreover, there are many reasons why the officers could not simply back away and hope to contain Mr. Simmons, the most obvious being that there was no time for the officers even to safely turn and run. It is reasonable to conclude that even if they had done so, Mr. Simmons might well have overtaken and injured or killed them. Further, this is a stairwell that is commonly used by students, employees and staff in the Champions Center, and the risk of an innocent person happening upon Mr. Simmons and his machete would have presented a great risk to their safety. Additionally, even if the officers would have had the time to transition to a Taser and fire accurately, doing so would have put them at significant risk. Although the officers could not have known this at the time, Mr. Simmons was wearing multiple layers of clothing, and was likely under the influence of amphetamine and THC. It is therefore far from certain that a Taser would have incapacitated Mr. Simmons.

With regard to the question of why Mr. Simmons acted as he did, it is clear that he was suffering from significant mental health and chemical abuse issues. The BCIT contacted a number of witnesses who described Mr. Simmons as having issues with cocaine, "spice," and marijuana abuse. As is alluded to above, a significant amount of amphetamine (110 ng/mL) and marijuana (71 ng/mL Delta-9 THC) was located in Mr. Simmons blood at the time of this incident. Tests for synthetic marijuana or "spice" remain pending. Drug use seems also to have played a significant role in Mr. Simmons' discharge from the Marine Corps, where he had previously served with distinction.



Writings found at the home where Mr. Simmons was staying.

Evidence of Mr. Simmons' mental health issues was also found at the home where he was living. Police found several pages of disorganized writings in red marker that seem in some ways similar to what he had written on a garage door and two cars on October 5. Letters from friends were also discovered in which they urged Mr. Simmons to seek professional help.

While it seems clear that Mr. Simmons was suffering from serious mental health and chemical dependency issues, it is equally clear that he presented a significant danger to Officers Austin and Connor, and that they acted within the law to protect themselves from him.

Because the use of force by Officers Austin and Connor was legally justified, no charges will be filed in this matter.

Sincerely,

Stanley L. Garnett
District Attorney
Twentieth Judicial District

Sean P. Finn
Chief Trial Deputy
Twentieth Judicial District



OFFICE OF THE DISTRICT ATTORNEY

TWENTIETH JUDICIAL DISTRICT

Stanley L. Garnett, District Attorney

July 11, 2014

Chief Greg Testa
Boulder Police Department
1805 33rd Street
Boulder, CO 80301

Dear Chief Testa,

This office has completed its review of the circumstances surrounding the shooting of Coleman Stewart in Boulder, Colorado on May 30, 2014. During that incident, three Boulder Police Officers discharged their weapons after Mr. Stewart produced a replica handgun and pointed it at the officers. Fortunately, Mr. Stewart survived his injuries. The officers' actions were reviewed with regard to whether their use of force was justified.

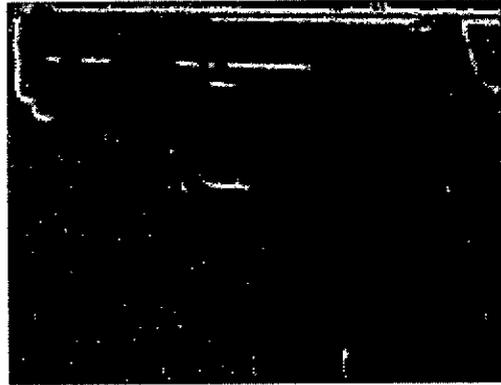
Representatives from my office have participated in this investigation and worked closely with the Boulder County Investigation Team (BCIT) since the day of the shooting. We were present for the on-scene investigation, and have reviewed the reports generated by members of the BCIT, transcripts and video recordings of witness interviews, diagrams and photographs of the scene, the Use of Force Policy for the Boulder Police Department, and the officers' training records. It is our conclusion that the use of force was justified.

The facts as determined by the Boulder County Investigation Team are as follows:

In May of 2014, Coleman Stewart lived alone in a ground-floor apartment on the corner of 11th Street and College Avenue in Boulder, Colorado. Mr. Stewart was not employed, but attended classes at the University of Colorado as a Continuing Education student. He did not own a firearm, but did possess a BB gun made by Smith and Wesson that he kept in his apartment. The BB gun did not have an orange tip on its barrel, or any other obvious indicator that it was not a firearm. In fact, the BB gun is a replica of a Smith and Wesson .40 caliber M&P, and while not identical in every respect, looks very similar to the firearm it is designed to replicate, as shown below.



Smith & Wesson BB Gun found on scene



Smith & Wesson .40 M&P

On the evening of May 29th, Mr. Stewart was in what his friends described as a “weird mood” as a result of separate ongoing arguments with his girlfriend and parents. At around 5:00 p.m., Mr. Stewart went with his friends to the Chop House at 921 Walnut Street in Boulder, where they consumed approximately two drinks each. From there, they went to a liquor store and bought a “fifth” of whiskey¹ and a six-pack of beer. They then went to a nearby apartment and continued to drink alcohol. According to one of Mr. Stewart’s friends, Mr. Stewart and one other person nearly finished the bottle of whiskey between them. Another friend reported that Mr. Stewart had consumed approximately ten whiskey drinks. The group then went to Conor O’Neill’s, a bar at 1932 13th Street where each bought a round of “Irish car bombs,” drinks consisting of Guinness beer, Bailey’s Irish Cream, and Jamison whiskey. By one account, Mr. Stewart had at least four drinks during this time. Words used to describe Mr. Stewart’s condition included “pretty intoxicated,” “incoherent,” and “drunk.”²

At around 1:00 a.m., Mr. Stewart exited Connor O’Neill’s and hailed a taxi cab driven by Joshua Worth. Mr. Stewart entered the front passenger seat of the cab and asked to be taken to 10th St. and College Ave. As they approached the intersection of 11th St. and College Ave., Mr. Stewart told Mr. Worth that he could let him out there. Mr. Worth indicated that the fare would be \$4.85, and told Mr. Stewart that he could pay by cash or credit card. Mr. Stewart opened the door and Mr. Worth recognized that he was preparing to exit the cab without paying. Before Mr. Stewart could exit, Mr. Worth turned the cab around, told Mr. Stewart to close his door, and headed back down College Ave. toward the Boulder Police Sub-Station located on 13th Street. Mr. Worth reported that during this time, Mr. Stewart said something to the effect of “I’m not paying you,” or “I’m not paying that.” Mr. Worth also warned Mr. Stewart that he was going to “push the red button that gets the cops.” Mr. Stewart responded “Push it. Get the cops. Whatever.”

As the cab approached the sub-station, Mr. Worth was honking his horn to get the attention of Officer Nicholas Frankenreiter, who had just exited the sub-station. As soon as the cab stopped, Mr. Stewart ran. Mr. Worth gave chase, and called out to the officer. Officer

¹ A “fifth” of whiskey typically contains 750mL.

² It should be noted that this description of Mr. Stewart’s condition is not unanimous. One of Mr. Stewart’s friends indicated that he did not drink much over the course of the evening, and he did not believe that Mr. Stewart had either.

Frankenreiter chased Mr. Stewart while identifying himself as a police officer and telling Mr. Stewart to stop.

Mr. Stewart opened a gate in the fence surrounding the patio of 1090 11th Street, Apartment # 1, and descended a small set of stairs to the door of his apartment. Officer Frankenreiter could not immediately open the gate, but looked over the fence, identified himself as a police officer, and asked Mr. Stewart to come talk to him. Officer Frankenreiter could not remember the exact epithet used by Mr. Stewart, but reported that Mr. Stewart mumbled "fuck you" or "go fuck yourself," and entered his apartment. Based on his observations of Mr. Stewart to that point, Officer Frankenreiter had the impression that Mr. Stewart was intoxicated.

Shortly thereafter, Officers Erin Starks, Jacob Vaporis, Ronald Perea, and Andrew Kirshbaum arrived on scene. The Officers again announced "Boulder Police" and ordered Mr. Stewart to come to the door. Officer Starks would later explain his expectations as follows: "At that point in my mind I didn't believe it was going to turn into what it turned into. I believe we probably had an intoxicated person that didn't want to pay a cab fare. I thought we could get him to come to the door, they would settle up, and that would be that."

There was a rectangular window in the upper portion of the door. There was also a large picture window facing the enclosed patio area. Both windows were covered by interior venetian blinds, but as the officers approached, they were able to see through the blinds and into the apartment at a downward angle. Officer Frankenreiter was moving between the door and the picture window as he called out to Mr. Stewart. Officer Kirshbaum approached the door and similarly announced that he was a police officer. He also said "We're not going anywhere so you need to come out and talk to us."

As he was looking through the picture window, Officer Frankenreiter saw Mr. Stewart approach the front door with what he believed to be a handgun, and point it at the window in the door. He believed the weapon was close enough to the door that the barrel might have come in contact with the glass. At that time, Officer Kirshbaum was shining a flashlight through window in the front door. Officers Kirshbaum, Starks, and Vaporis suddenly saw the blinds lifted by the muzzle of a handgun, which was pointed directly at them. Before the BB gun was found, Officer Kirshbaum was able to describe the weapon he saw as having a "tan or sand colored frame and a black barrel." The officer also described that the weapon "appeared to me to be tan, like sand dessert camo, without the camo just beige, tannish. And a black barrel, I could see the front sight because it was pointed right at my chest."

Officers shouted "GUN!" While quickly backing away, Officer Frankenreiter fired twice, Officer Starks fired 5 times, and Officer Vaporis fired 3 times. Bullets went through the front door and picture window. Bullets also struck a rock wall next to the door. Officer Kirshbaum felt an impact to his upper leg, which was the result of a fragment ricochet from the rock wall. Officer Starks was struck in the eye by breaking glass. Believing they were confronting an individual armed with a handgun, the officers retreated to take more defensive positions. No other shots were fired. Because the officers were unable to safely take cover within the patio area, a large tactical vehicle called a "Bear Cat" was brought in to knock down a portion of the fence, and allow them to observe the front of the apartment from a safer distance.

Several additional officers responded, including those from the Special Weapons And Tactics or SWAT team. Shortly thereafter, the officers involved in the shooting were taken from the scene to the Boulder Police Department, where they were interviewed by Detectives from the BCIT.

Mr. Stewart was shot in his right arm and right knee. He then went into his bedroom, where he removed his shirt and pants. SWAT Team members broke out the bedroom window of the apartment, at which time they heard Mr. Stewart say things such as "what are you doing?" and "leave me alone." Officers asked through the window if Mr. Stewart was hurt, and he responded "I don't think so, I don't know," though he was bleeding heavily from his wounds. Mr. Stewart was ordered to place his hands through the broken window, which he did. Mr. Stewart made additional statements at this time including "I didn't do anything", "I don't know what is going on" and "I'm scared." He also reported that his leg was hurting, but he didn't know why. He appeared surprised when told that he was injured and possibly shot.

An additional team of officers entered the apartment through the front door, and escorted Mr. Stewart outside, where his wounds were assessed. Mr. Stewart was then taken to the hospital. During the ambulance ride, Mr. Stewart told officers that he was drinking at Conor O'Neill's, then came home and went to bed. He claimed not to remember anything else. Shortly thereafter, while being treated at the hospital, Mr. Stewart was heard to say "Why am I handcuffed, who fucking shot me?" He also stated repeatedly that he "didn't even own a gun." He also told detectives that he owned a BB gun that he described as a "Smith and Wesson replica pistol." That pistol, which is pictured above, was later found near the door of the apartment during the execution of a search warrant.

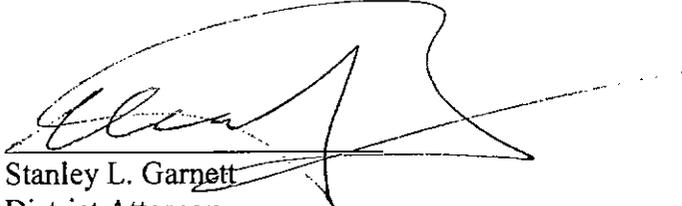
A blood sample was taken from Mr. Stewart at the hospital and sent to an independent laboratory for testing. The results revealed that when his blood was drawn at 3:50 a.m., Mr. Stewart's Blood Alcohol Content was .176.

The use of force by Officers Frankenreiter, Starks, and Vaporis was justified pursuant to §18-1-704, C.R.S. and §18-1-707, C.R.S. Those sections provide that a peace officer is justified in using reasonable and appropriate physical force upon another person when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force. Here, while the weapon was ultimately determined to be a BB gun, it closely resembles a real firearm. Having pursued Mr. Stewart into his apartment, the officers had no reason to believe that Mr. Stewart would threaten them with a BB gun, nor can they reasonably be expected to unnecessarily risk their lives to make such an assumption under these circumstances. Rather, these officers were reasonable in their belief that they were about to come under fire, and used their weapons only until they were no longer presented with an imminent threat.

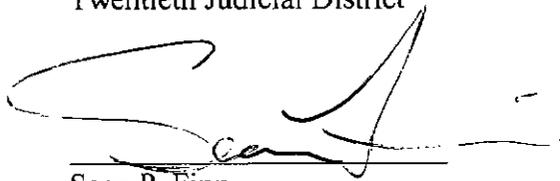
We also note that while the officers may have been legally entitled to enter Mr. Stewart's apartment without his consent to place him under arrest, they exercised restraint and attempted to get him to come outside voluntarily, and without further use of force. *See People v. Mendoza-Balderama*, 981 P.2d 150, 157 (Colo. 1999) (exigent circumstances may exist justifying a warrantless entry when the police are engaged in a bona fide pursuit of a fleeing suspect).

Because the use of force by Officers Frankenreiter, Starks, and Vaporis was legally justified, no charges will be filed in this matter.

Sincerely,



Stanley L. Garnett
District Attorney
Twentieth Judicial District



Sean P. Finn
Chief Trial Deputy
Twentieth Judicial District



OFFICE OF THE DISTRICT ATTORNEY

TWENTIETH JUDICIAL DISTRICT

Stanley L. Garnett, District Attorney

May 14, 2015

Sheriff Joe Pelle
Boulder County Sheriff's Office
5600 Flatiron Parkway
Boulder, CO 80301

Dear Sheriff Pelle,

This office has completed its review of the circumstances surrounding the shooting of Lue Vang ("Vang") in Boulder County, Colorado on April 22, 2015. During that incident, Deputy Sheriff Jeffrey Brunkow fired a single shot from his rifle, killing Mr. Vang. The Deputy's actions were reviewed with regard to whether his use of force was legally justified.

Representatives from my office have participated in this investigation since the day of the shooting, and have worked closely with the Boulder County Investigation Team (BCIT). We were present for the on-scene investigation, and have reviewed reports associated with this investigation, transcripts and video recordings of witness interviews, diagrams and photographs of the scene, the Use of Force Policy for the Boulder County Sheriff's Office, and the Deputy's training records. It is our conclusion that the use of force was justified.

The following is a brief synopsis of the facts as investigated by the BCIT:

Lue Vang met his wife approximately 10 years prior to the events that are the subject of this letter. Vang's wife reported that their relationship became abusive around 2010. She reported several instances of physical abuse. Family members also reported seeing her with bruises. Vang had also repeatedly threatened that he would kill her if she left him. On one occasion, Vang held a knife to her throat and said "if you don't want to be with me anymore, I'll just kill you." On another occasion, Vang drove her to the Dowdy Draw trailhead in Boulder County, and threatened to kill her there.

After years of abuse, Vang's wife left him in April of 2015, taking her three children with her. She reported sleeping in her car on the night she left because there was nowhere else she felt she could go. On April 19, she went to her father William's house.

5/14/15
by regional
& email (BSP)

On April 20, Vang purchased a .357 caliber revolver. That same day, Vang called William's house and said he was coming over to work things out with his wife and take her home. Vang's wife immediately took the children and left the house. Vang arrived shortly thereafter and began pounding on the front door. He angrily demanded to see his wife, and upon being told she was not there, demanded to search the home. Vang threatened to kill William if he was not allowed inside, but William did not see any weapons. When Vang was satisfied his wife was not there, he left.

Shortly thereafter, a family member helped Vang's wife buy airline tickets to St. Paul, Minnesota. During this time, Vang would frequently call his wife to tell her he had accepted the fact that she did not want to be with him, but that he wanted the couple's white car. Before leaving town, the car was left in a parking lot with the keys and a signed title inside. Vang was not aware she had left the state.

On the morning of the 22nd, Vang called his wife and told her that he was at her parents' house. Vang demanded that she bring the car to him. He told her he had a gun, and that "you give me the car, I set you free." His wife told him where the car was, and told him he could go and pick it up. Vang then sent her a picture of a handgun and told her that if she did not show up, if she called police, or if she told her parents what was happening, he would kill her parents. His wife told him to meet her at the location of the car, not wanting to tell him she was out of state, and hoping to get him away from her parents' home. Vang told her he would meet her at the car's location, but that he was bringing "someone" to exchange for her. After hanging up the phone, Vang's wife called 911 and asked that officers check on the welfare of her family.

Vang approached the home, where he asked William for help picking up the car and getting the title put in his name. Vang appeared agitated, and William was concerned for his family, so he and his son agreed to accompany Vang to pick up the car and go to the Department of Motor Vehicles ("DMV"). While they were concerned about what might happen, it was their intention to get Vang away from the other people in the home.

After first picking up the car, then going to the DMV to complete the title transfer, they got back into the car. Vang locked the doors and produced a handgun. He told William that he would die today, and began driving west. Vang became increasingly agitated, and at one point told his father-in-law that he had quit his job, and that he was going to kill him. Both hostages reported Vang saying that after he killed the two of them, he was going to return to their home and kill the rest of the family.

At this time, William also reported noticing text messages from his daughter warning him about Vang, and indicating that he had a gun. Vang also allowed William to speak on the telephone, but said "no location, or you die." Also during this time, William called 911 twice and hung up. In the background, dispatchers heard Vang say "why'd you call the cops?" Dispatchers called back, but William did not feel it was safe to answer.

Officers responded to William's home and spoke with other members of his family who were still unaware of Vang's plans. The deputies learned the make and model of the car, as well as its license plate number. Officers were told that Vang had been acting suspiciously, but that William and his son had left with Vang voluntarily. Shortly after leaving the residence, officers received another call from Vang's wife. She told them what Vang had been saying, and that she feared for her family. She also emailed officers the photo of a gun that Vang had sent to her. Shortly thereafter, she received a picture of a gun from Vang, with the message "tic, tic, tic."

Officers called Vang's phone. Vang was hesitant to answer questions, and said he was going to work. Also during this time, family members were receiving calls from William and his son. At one point, William told a family member "I can't tell you where we're at, he will kill us." Another family member reported hearing William say "please don't kill us, please don't kill us."

Officers began searching the area surrounding DMV locations near William's home. They also began attempting to "ping" Vang's cell phone in an attempt to discover its location. One ping showed that Vang's phone was near 120th and Lowell. At that same time, a witness called 911 reporting that he saw two Asian males fighting in a car, then heard one yell "help, call 911" before the car sped off. William also reported reaching his arm out an open passenger side window and waving for help. He stopped waving and brought his arm back in when Vang asked "you want to die right here?"

William's son was able to have the following conversation via text messages with a family member, which was later observed on his phone:

"Where does it seem his [sic] taking you?
"Somewhere we don't know."
"What are the street signs?"
"What's going on now?"
"We're going towards the mountain."
"2076-3298 S Foothills hwy Boulder, CO 80303 United States."

At around 1:11 PM, repeated cell phone pings placed Vang's cell phone at the Dowdy Draw trailhead. Shortly before Deputies arrived, Vang made statements to William and his son indicating that they should look around and enjoy the scenery since this was the last time they'd see it. From 1:16 to 1:18 PM, Sheriff's Deputies, including Deputy Brunkow, arrived and saw Vang's vehicle in the parking lot. Deputy Brunkow parked his marked Chevy Tahoe approximately 40 yards from Vang's car and retrieved his department-issued rifle from the back. Vang moved from the driver's seat to the rear, where he sat behind William. Vang then opened the back passenger door, waved a handgun in the air and yelled for them to stay back. In response to commands from the deputies, Vang yelled that he was not coming out of the car. Deputies and observers also heard Vang yell "you're not going to get me this way" or "I'm not

Sheriff Joe Pelle

Boulder County Sheriff's Office

May 14, 2015

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going out like this." Vang also sent a text message to his wife around this time saying she had "fucked up" and she would have to "live with this."

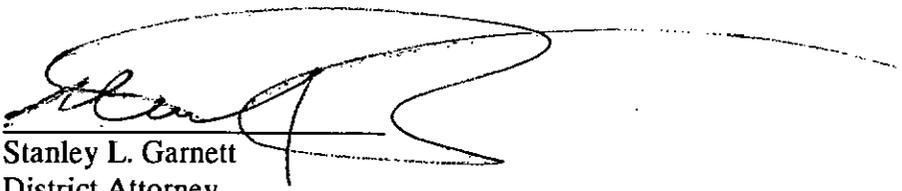
Deputy Brunkow had a view of Vang through a 3x magnified scope on his rifle. When he saw Vang raise the handgun to the back of William's head, he fired a single shot, which struck Vang in the head, killing him instantly. Deputies approached, took the weapon from Vang's hand, and set it on the roof of the car. Also found in the car were 50 rounds of .357 ammunition. Another 50 rounds were found on Vang's person.

William and his son reported feeling very grateful to the deputies that they credit with saving their lives. They were certain that, if it were not for the actions of Deputy Brunkow and the other members of the Sheriff's Office, Vang would have murdered them, and possibly others.

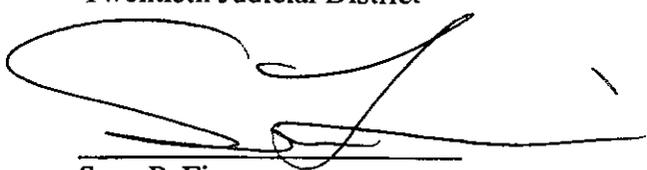
The use of force by Deputy Brunkow was justified pursuant to §18-1-704, C.R.S. and §18-1-707, C.R.S. Those sections provide that a peace officer is justified in using reasonable and appropriate physical force upon another person when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force. Here, Deputy Brunkow responded to a very dangerous situation, attempted, along with his fellow deputies to convince Vang to get out of the car, and only resorted to lethal force when Vang placed another person in imminent and mortal danger.

Because the use of force by Deputy Brunkow was legally justified, no criminal charges will be filed in this matter.

Sincerely,



Stanley L. Garnett
District Attorney
Twentieth Judicial District



Sean P. Finn
Chief Trial Deputy
Twentieth Judicial District



OFFICE OF THE DISTRICT ATTORNEY

TWENTIETH JUDICIAL DISTRICT

Stanley L. Garnett, District Attorney

January 21, 2014

Sheriff Joe Pelle
Boulder County Sheriff's Office
5600 Flatiron Ave.
Boulder, CO 80301

Dear Sheriff Pelle,

This office has completed its review of the circumstances surrounding the shooting of Christopher George in Boulder County, Colorado on December 29, 2013. In that incident, Boulder County Sheriff's Deputy Brandon Bussard shot Mr. George after Mr. George produced a handgun, pointed it at him, and manipulated it as if attempting to fire. Mr. George did not survive his wounds; the Deputy's actions were therefore reviewed with regard to whether the use of deadly force was justified.

As part of the analysis, we have reviewed the complete file provided by the Boulder County Investigation Team (BCIT). Additionally, representatives of my office have worked closely with the BCIT since the day of the shooting, advising investigators, approving warrants, and participating in briefings. The case file made available for review includes reports of the investigators assigned to the investigation, transcripts and video recordings of witness interviews, diagrams and photographs of the scene, the Use of Force Policy for the Boulder County Sheriff's Office, and Deputy Bussard's training records. It is our conclusion that the use of force was justified.

The facts as determined by the Boulder County Investigation Team are as follows:

In December of 2013, Christopher George lived in the home of his mother in Boulder County, Colorado. In recent months, there had been some tension in the family regarding the fact that Mr. George did not have a job, or any plans to move out of the home. On Thursday, December 26, Mr. George told his mother that he had "made a decision" to be out of her house by December 31. Ms. George asked her son if he had any plans with regard to where he was going to live or work, and he said he did not. Shortly after this conversation, Mr. George went into his bedroom, where he stayed until the morning of December 29, leaving only to use the restroom.

On the morning of December 27, Ms. George tried to speak with her son, but he refused, making only comments such as "I'm a failure. Go away. Don't bother me." Ms. George tried again on the morning of December 29, asking him how he was going to solve "this problem." Mr. George told her that he was "not worried about solving anything." A subsequent search of Mr. George's computer revealed that he had recently been researching suicide by starvation and dehydration.

Ms. George called Mr. George's sister, Karen, for help. Karen is a trained paramedic who has experience dealing with suicidal people. Karen arrived at the home and tried to talk with Mr. George. She asked him about some recent job leads she had sent him, to which he responded "No. Not going to apply. . . Not going that route." While Mr. George did not make any overtly suicidal statements, he did say things like "we both know where this is going."

Karen encouraged her mother to call for mental health intervention, which she did. The first facility Ms. George attempted to call transferred her to another. She was then told to call a different facility. Finally, she was connected with someone she understood to be a doctor doing rounds. That person told Ms. George to call the Sheriff's department, and to have Mr. George evaluated by law enforcement. After discussing this with her daughter, the two decided that it might be in Mr. George's best interest to be evaluated, and possibly taken for a 72 hour mental health hold for his own safety.

At 8:31 a.m., Ms. George called the Boulder County Sheriff's Office. Ms. George reported being very concerned about Mr. George's welfare because he had recently been very depressed and anxious. She further reported that he had gone into his room on Thursday, and had not been eating or drinking. She told dispatch about a conversation during which Mr. George had said "it's not about dealing with problems anymore." She also reported that she believed this might be a "suicidal action." Ms. George also reported to dispatch that Mr. George had a history of mental health concerns and suicidal behavior, and that to her knowledge, Mr. George had no access to weapons.

Karen didn't want Mr. George to be surprised when deputies arrived, and told him they were on their way. While waiting for deputies to arrive, Mr. George initially refused to let Karen back into his room, where he was alone for a short period of time. He then opened the door, directed Karen to a chair, and closed the door behind her. Mr. George then got back into the bed, where he sat up against the headboard, and covered himself with a blanket up to the chest. He told her that all the answers were in a note left on a nearby table. He told her that he hadn't eaten or drank anything in 3 days, and while he knew "it" might take 7 to 10 days, he had a "redundancy plan" if other plans failed. He did not say what that plan was. Again here, Mr. George never specifically said that he was attempting to kill himself, despite Karen's attempts to get him to verbalize exactly what his intentions were.

In the note he left on the table, Mr. George discussed being disappointed with his life, and his failure to become the person he wanted to be. While it did not expressly mention suicide, the note leaves the impression that Mr. George was extremely depressed:

Every year gets a little harder, as the years show me
I'm just a bit farther away than the year before.
I can't whip myself up into believing anymore.
I don't believe that "I will."
There's lots of stuff I could do, in theory, but I'm
not gonna.

[Emphasis in original]

The note goes on to thank those who "tried to help," mentioning "Karen and mom in particular." It closes with the words "I'm done with this battle."

Deputy Bussard was dispatched to the residence and given the information provided over the telephone by Ms. George. Upon arrival, he parked one house away and waited for a second deputy to arrive. Once both were present, they knocked on the door and spoke with Ms. George, who again expressed her concerns for her son. She then escorted them to Mr. George's room, where his sister was still speaking with him. Deputies knocked on the door and heard Mr. George say "go away." Karen had already gotten up to let the deputies in when they asked "ma'am, can you let us in?" After opening the door, Karen left the room.

Based on the information Deputy Bussard had received, he hoped to be able to evaluate whether Mr. George needed to be taken into custody for his own safety. Deputy Bussard moved into the room to talk to Mr. George, and the second deputy followed. Deputy Bussard first tried to get Mr. George to leave the room to talk with him. Mr. George refused. The deputy then asked Mr. George if he would at least move out of the bed into a chair. Mr. George again refused.

As they were speaking, Deputy Bussard noticed Mr. George's hand slowly reaching toward his back, almost as if he were reaching back to scratch an itch. When Mr. George's hand came back around, it was holding a black semi-automatic handgun, which Mr. George pointed directly at Deputy Bussard's torso. Deputy Bussard shouted "gun" to let the other deputy know what was happening. Both drew weapons and the second deputy began moving around Deputy Bussard. Both deputies noticed Mr. George to be manipulating the weapon. Deputy Bussard fired three times, striking Mr. George twice. The second deputy was beginning to pull the trigger of his own weapon when Mr. George's hand dropped, allowing that deputy to take Mr. George's pistol away from him. Because he no longer perceived a threat, the second deputy did not fire.

The deputies called for medical assistance and a helicopter to transport Mr. George to the hospital. Immediately following the shooting, Deputy Bussard was described by responding officers as "visibly shaken and very pale."

On his way to the hospital, Mr. George indicated to medical personnel that he had shot himself.

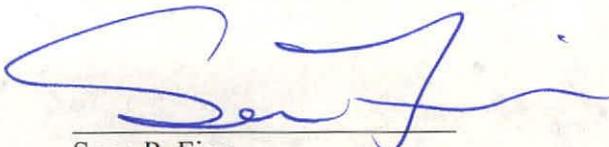
Deputy Bussard's use of deadly force was justified pursuant to §18-1-704, C.R.S. and §18-1-707, C.R.S. A peace officer is justified in using deadly physical force upon another when he reasonably believes that it is necessary to defend himself from what he reasonably believes to be the use or imminent use of deadly physical force. *See* §18-1-707(2)(a) C.R.S. Here, Mr. George had produced a handgun, pointed it at the deputy, and was manipulating it in a way that reasonably led Deputy Bussard to believe he intended to fire. It should be noted that when interviewed, Deputy Bussard reported being surprised he was not shot, due to the fact that Mr. George was able to retrieve his weapon and point it at Deputy Bussard before Deputy Bussard was able to fire. A subsequent inspection of Mr. George's weapon revealed that a live round was jammed in the ejection port, in what is often referred to as a "stovepipe" jam. This type of malfunction would have temporarily prevented the weapon from firing.

Because Deputy Bussard's use of force was legally justified, no charges will be filed in this matter.

Sincerely,



Stanley L. Garnett
District Attorney
Twentieth Judicial District



Sean P. Finn
Chief Trial Deputy
Twentieth Judicial District